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JUSTICE of the PEACE,

A N D

PARISH OFFICER.

By RICHARD BURN, L.L.D.

One of his MAJESTY's Justices of the Peace for the
County of WESTMORLAND.

The TENTH EDITION.

VOL. III.

LONDON:

Printed by H. WOODFALL and W. STRAHAN, Law-Printers
to the King's most excellent Majesty;

For A. MILLAR, in the Strand.

M.DCC.LXVI.

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AND

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Justices of the peace.

JUSTICES of the peace are judges of record, appointed by the king, to be justices within certain limits, for the conservation of the peace, and for the execution of divers things comprehended within their commission, and within divers statutes committed to their charge. *Dalt. c. 2.*

And a record or memorial made by a justice of the peace, of things done before him judicially in the execution of his office, shall be of such credit, that it shall not be gainsaid. One man may affirm a thing, and another man may deny it; but if a *record* once say the word, no man shall be received to aver or speak against it; for if men should be admitted to deny the same, there would never be any end of controversies. And therefore to avoid all contention, while one saith one thing, and another saith another thing, the law repositeth it self wholly and solely in the report of the judge. And hereof it cometh, that he cannot make a substitute or deputy in his office, seeing that he may not put over the confidence that is put in him. Great cause therefore have the justices to take heed that they abuse not this credit; either to the oppressing of the subject by making an untrue record, or the defrauding of the king by suppressing the record that is true and lawful. *Lamb. 63—66.*

Hereof also it cometh, that if a justice of the peace certify to the king's bench, that any person hath broken the peace in his presence, upon this certificate such person shall be there fined, without allowing him any traverse thereto. *Dalt. c. 70.*

And that I may treat intelligibly concerning this office (of which lord *Coke* says the whole christian world hath not the like, if it be duly executed, 4 *Inft.* 170,) I will set forth

Justices of the peace.

- I. *The office of conservators of the peace at the common law, before the institution of justices of the peace.*
- II. *The commission of the justices of the peace, founded on the statute law.*
- III. *The justice of the peace his oath of office.*
- IV. *Of fees to be taken by justices of the peace.*
- V. *Some general directions relating to justices of the peace, not falling under any particular title of this book.*
- VI. *Their indemnity and protection by the law, in the right execution of their office; and their punishment for the omission of it.*

- I. *The office of conservators of the peace at the common law, before the institution of justices of the peace.*

Conservators by election.

1. Of ancient time such officers or ministers, as were instituted either for preservation of the peace of the county, or for execution of justice, because it concerned all the subjects of that county, and they had a great interest in the just and due exercises of their several places, were by force of the king's writ in every several county chosen in full or open county by the freeholders of that county: as before the institution of justices of the peace, there were conservators of the peace in every county, whose office (according to their names) was to conserve the king's peace, and to protect the obedient and innocent subjects from force and violence. These conservators, by the ancient common law, were by force of the king's writ chosen by the freeholders in the county court, out of the principal men of the county; after which election so made, and returned, then in that case the king directed a writ to the party so elected, to take upon him and execute the office until the king should order otherwise. And thus the coroners still continue to be chosen in full county; as also the knights of the shire for the parliament. 2 *Inst.* 558, 559.

2. Besides

Justices of the peace.

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2. Besides these conservators of the peace properly so called, there were and are other conservators of the peace by virtue of certain offices : as for instance ;

Conservators by office.

(1) The lord chancellor, and every justice of the king's bench, have, as incident to their offices, a general authority to keep the peace throughout all the realm, and to award process for the surety of the peace, and to take recognizances for it. 2 *Haw.* 32.

(2) Also, every court of record, as such, hath power to keep the peace within its own precinct. 2 *Haw.* 32.

(3) Also, every justice of the peace is a conservator of the peace. *Crom.* 6.

(4) Also, every sheriff is a principal conservator of the peace, and may without doubt *ex officio* award process of the peace, and take surety for it. And it seems the better opinion, that the security so taken by him is by the common law looked on as a recognizance or matter of record, and not as a common obligation. 2 *Haw.* 33.

(5) Also, every coroner is another principal conservator of the peace, and may certainly bind any person to the peace, who makes an affray in his presence. But it seems the better opinion, that he has no authority to grant process for the peace ; and it seems clear, that the security taken by him for the keeping the peace (except only where it is taken by him as judge of his own court for an affray done in such court) is not to be looked on as a recognizance, but as an obligation. 2 *Haw.* 33.

(6) Also, every high and petit constable are by the common law, conservators of the peace. 2 *Haw.* 33.

And it is said, that if a constable see persons engaged in an affray, or upon the very point of entering upon it, as where one shall threaten to kill, wound, or beat another, he may imprison the offender of his own authority for a reasonable time, till the heat shall be over, and also afterwards detain him till he find surety of the peace by obligation. 1 *Haw.* 137.

But it is said, that a constable hath no power to arrest a man for an affray done out of his own view ; for it is the proper business of a constable to preserve the peace, not to punish the breach of it ; nor doth it follow from his having power to compel those to find sureties who break the peace in his presence, that he hath the same power over those who break it in his absence. 1 *Haw.* 137.

3. There were also other conservators of the peace by tenure ; who held lands of the king by this service, among

Conservators by tenure.

others,

Justices of the peace.

others, of being conservators of the peace within such a district. 2 *Haw.* 33.

Conservators by
prescription.

4. Also there were other conservators of the peace by prescription; who claimed such power from an immemorial usage in themselves and their predecessors or ancestors, or those whose estate they had in certain lands, which wholly depended upon such usage, both as to its extent, and the manner in which it was to be exercised. 2 *Haw.* 33.

Thus it is said, that a mayor of a corporation may be a conservator of the peace by prescription. *Crom.* 6.

It is questioned indeed by some, whether any such power can be claimed by usage; yet if the power of holding pleas and even of courts of record, which are of so high a nature, and imply a power of keeping the peace within their own precincts, may be claimed by usage, as it seems to be certain that they may; it seemeth that the bare authority of keeping the peace in a certain district may as well be claimed by such usage. 2 *Haw.* 34.

Power of con-
servators.

5. The authority which such conservators of the peace, whether by election, or tenure, or prescription, have at common law, is the same authority which constables of a vill or wapentake have at this day. *Crom.* 6. 2 *Haw.* 34.

Their duty.

6. The general duty of the conservators of the peace by the common law, is to employ their own, and to command the help of others, to arrest and pacify all such who in their presence, and within their jurisdiction and limits, by word or deed, shall go about to break the peace. *Dalt.* c. 1.

And if a conservator of the peace, being required to see the peace kept, shall be negligent therein, he may be indicted and fined. *Dalt.* c. 1.

And if the conservators of the peace have committed or bound over any offenders, they are then to send to, or be present at, the next sessions of the peace, or gaol delivery there to object against them. *Dalt.* c. 1.

II. Of the commission of justices of the peace.

Justices of the peace at this day are of three sorts; 1. By act of parliament; as the bishop *Ely* and his successors, and the archbishop of *York*, and bishop of *Durham*, 27 H. 8. c. 4. 2. By charter, or grant made by the king under the great seal; as mayors and the chief officers in divers corporate towns. 3. By commission.

At the first, by the statute of the 1 *Ed.* 3. which is the first statute that ordains the assignment of justices of the peace by the king's commission, those justices had no other power

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power but only to keep the peace. But the very next year, the form of the commission was enlarged, and continued still further to be enlarged both in that king's reign, and in the reign of almost every other succeeding prince, until the 30th year of the reign of *Q. Elizabeth*, when by the number of the statutes particularly given in charge therein to the justices, many of which nevertheless had been a good while before repealed, and by much vain repetition, and other corruptions that had crept into it, partly by the miswriting of clerks, and partly by the untoward huddling of things together, it was become so cumbersome and foully blemished, that of necessity it ought to be redressed. Which imperfections being made known to Sir *Chr. Wrey*, then Lord Ch. Justice of the king's bench, he communicated the same with the other judges and barons, so as by a general conference had amongst them, the commission was carefully refined in the *Michaelmas* term 1590, and being then also presented to the lord chancellor, he accepted thereof, and commanded the same to be used: Which continues with very little alteration to this day. *Lamb. c. 9.*

Which is as follows :

George the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth. To A. B. C. D. &c. greeting.

Know ye that we have assigned you, jointly and severally, and every one of you, our justices to keep our peace in our county of W. And to keep and cause to be kept all ordinances and statutes for the good of the peace, and for preservation of the same, and for the quiet rule and government of our people made, in all and singular their articles in our said county (as well within liberties as without) according to the force, form, and effect of the same; And to chastise and punish all persons that offend against the form of those ordinances or statutes, or any one of them, in the aforesaid county, as it ought to be done according to the form of those ordinances and statutes; And to cause to come before you, or any of you, all those who to any one or more of our people concerning their bodies or the firing of their houses have used threats, to find sufficient security for the peace, or their good behaviour, towards us and our people; and if they shall refuse to find such security, then them in our prisons until they shall find such security to cause to be safely kept.

We have also assigned you, and every two or more of you (of whom any one of you the aforesaid A. B. C. D. &c. we

Justices of the peace.

will shall be one) our justices to inquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be the better known, of all and all manner of felonies, poisonings, enchantments, forceries, art magic, trespasses, forestallings, regratings, ingrossings, and extortions whatsoever; and of all and singular other crimes and offences, of which the justices of our peace may or ought lawfully to inquire, by whomsoever and after what manner soever in the said county done or perpetrated, or which shall happen to be there done or attempted; And also of all those who in the aforesaid county in companies against our peace, in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride; And also of all those who have there lain in wait, or hereafter shall presume to lie in wait, to maim or cut or kill our people; And also of all victuallers, and all and singular other persons, who in the abuse of weights or measures, or in selling victuals, against the form of the ordinances and statutes, or any one of them therefore made, for the common benefit of England and our people thereof, have offended or attempted, or hereafter shall presume in the said county to offend or attempt; And also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their offices about the premises, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been, or shall happen hereafter to be careless, remiss, or negligent in our aforesaid county; And of all and singular articles and circumstances, and all other things whatsoever, that concern the premises or any of them, by whomsoever, and after what manner soever, in our aforesaid county done or perpetrated, or which hereafter shall there happen to be done or attempted in what manner soever; And to inspect all indictments whatsoever so before you or any of you taken or to be taken, or before others late our justices of the peace in the aforesaid county made or taken, and not yet determined; and to make and continue processes thereupon, against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted, until they can be taken, surrender themselves, or be outlawed: And to hear and determine all and singular the felonies, poisonings, enchantments, forceries, arts magick, trespasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premises, according to the laws and statutes of England, as in the like case it has been accustomed, or ought to be done; And the same offenders, and every of them for their offences, by fines, ransoms, amerciaments, forfeitures, and other means as according to the law
and

Justices of the peace.

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and custom of England, or form of the ordinances and statutes aforesaid, it has been accustomed, or ought to be done, to chastise and punish.

Provided always, that if a case of difficulty, upon the determination of any the premisses, before you, or any two or more of you, shall happen to arise; then let judgment in no wise be given thereon, before you, or any two or more of you, unless in the presence of one of our justices of the one or other bench, or of one of our justices appointed to hold the assizes in the aforesaid county.

And therefore we command you and every of you, that to keeping the peace, ordinances, statutes, and all and singular other the premisses, you diligently apply yourselves; and that at certain days and places, which you, or any such two or more of you as is aforesaid shall appoint for these purposes, into the premisses ye make inquiries; and all and singular the premisses hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains, according to the law and custom of England: Saving to us the amerciaments, and other things to us therefrom belonging.

And we command by the tenor of these presents our sheriff of W. that at certain days and places, which you, or any such two or more of you as is aforesaid, shall make known to him, he cause to come before you, or such two or more of you as aforesaid, so many and such good and lawful men of his bailiwick (as well within liberties as without) by whom the truth of the matter in the premisses shall be the better known and inquired into.

Lastly, we have assigned you the aforesaid A. B. keeper of the rolls of our peace in our said county. And therefore you shall cause to be brought before you and your said fellows, at the days and places aforesaid, the writs, precepts, processes, and indictments aforesaid, that they may be inspected, and by a due course determined as is aforesaid.

In witness whereof we have caused these our letters to be made patent. Witness our self at Westminster, &c.

George the third, &c.] This manner of issuing the commission in the king's name, seems to be founded on the statute of the 27 H. 8. c. 24. which enacts, that all justices of the peace shall be made by letters patents under the king's great seal, in the name and by authority of the king; but reserves to all cities and towns corporate which have justices the liberties which they have enjoyed in that behalf.

To A. B. C. D. &c. greeting.] From the persons here named in the commission, it may be proper to consider, who may, or may not, be justices of the peace.

By

Justices of the peace.

By the statutes of 13 R. 2. c. 7. and 2 H. 5. ft. 2. c. 1. The justices shall be made within the counties of the most sufficient knights, esquires, and gentlemen of the law.

And by the 18 G. 2. c. 20. it is enacted as follows: *viz.* No person shall be capable of being or acting as a justice of the peace, who shall not have in law or equity, for his own use, in possession, a freehold, copyhold, or customary estate for life, or for some greater estate, or an estate for some long term of years, determinable upon one or more lives, or for a certain term originally created for 21 years, or more, in lands, tenements, or hereditaments, in *England* or *Wales*, of the clear yearly value of 100 l. above what will discharge all incumbrances affecting the same, and all rents and charges payable out of the same; or who shall not be intitled to the immediate reversion or remainder of lands leased for one, two, or three lives, or for any term of years determinable on the death of one, two, or three lives, upon reserved rents of the clear yearly value of 300 l.

And who shall not before he acts, at the sessions of the county where he intends to act, take and subscribe the oath following; *I A. B. do swear, that I truly and bona fide have such an estate, in law or equity, to and for my own use and benefit, consisting of———* (specifying the nature of such estate, whether messuage, land, rent, tythe, office, benefice, or what else) *as doth qualify me to act as a justice of the peace for the county, riding, or division of———, according to the true intent and meaning of an act of parliament made in the 18th year of the reign of his majesty king George the second, intituled, An act to amend and render more effectual an act passed in the fifth year of his present majesty's reign, intituled, An act for the further qualification of justices of the peace; and that the same (except where it consists of an office, benefice, or ecclesiastical preferment, which it shall be sufficient to ascertain by their known and usual names) is lying or being, or issuing out of lands, tenements, or hereditaments, being within the parish, township, or precinct of——— or in the several parishes, townships, or precincts of———, in the county of———, or in the several counties of——— (as the case may be.)*

Which oath taken and subscribed, shall be kept by the clerk of the peace among the records of the sessions.

And the clerk of the peace shall on demand forthwith deliver an attested copy to any person paying 2s. for the same; which being proved to be a true copy of such oath, shall be admitted in evidence on any issue in an action brought on this act.

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And if any person shall act as justice, without having taken and subscribed the said oath, or without being qualified as above, he shall for every offence forfeit 100*l.* half to the poor of the parish in which he most usually resides, and half to him who shall sue, with full costs. The prosecution to be in six months.

And in such action, the proof of the qualification shall lie on the person against whom it is brought.

And if the defendant intends to insist on any lands not contained in such oath, he shall at or before the time of pleading deliver to the plaintiff or his attorney a notice in writing specifying such lands, and the parish and county where they are situate (offices and benefices excepted, which it shall be sufficient to ascertain by their usual names:) And if the plaintiff in such suit shall think fit thereon not to proceed further, he may with leave of the court discontinue such suit, on payment of costs to the defendant as the court shall award.

And upon trial no estate, but what is contained in the oath and notice, shall be admitted as any part of the qualification.

And if the plaintiff or informer shall discontinue (otherwise than as aforesaid) or be nonsuit, or judgment be given against him, he shall pay treble costs.

But this shall not extend to any city, town, or liberty, having justices of their own; nor to any peer, lord of the privy council, judge, attorney or solicitor general, or to the justices of the great sessions for *Cheshire* and *Wales*, or to the eldest son or heir apparent of a peer, or of any person qualified to serve as a knight of a shire:

Nor to the officers of the board of green cloth, or principal officers of the navy, or the two under secretaries in each of the offices of the principal secretary of state, or the secretary of *Chelsea* college, in their respective liberties; nor to the heads of colleges or halls, or vicechancellor, of either of the universities, or to the mayors of *Oxford* or *Cambridge*.

By the 1 G. 3. c. 13. Whereas doubts have arisen, whether persons who were justices at the time of the demise of his late majesty king *George* the second, and who have been or shall be constituted justices by his present majesty, can act as such before they have again taken and subscribed the said oath; it is enacted, that all persons who were justices at the demise of his said late majesty, or who shall be justices at the time of the demise of his present majesty or any of his successors, and shall afterwards be appointed

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pointed justices by his said present majesty or any of his successors, and who shall take the oath of office before the clerk of the peace or his deputy, and who shall have taken and subscribed the said oath required by the 18 G. 2. c. 20. shall and may act as justices, without being obliged to take and subscribe the same again. And generally, by the 5 G. 3. c. 4. persons having omitted to qualify themselves according to the said act of 18 G. 2. c. 20. are indemnified, provided they qualify on or before Nov. 28. 1765.

By the 1 M. sess. 2. c. 8. No sheriff shall exercise the office of a justice of the peace, during the time that he acts as sheriff. And the reason seems to be, because he cannot act at the same time both as judge and officer, for so he would command himself to execute his own precepts. *Dalt. c. 3.*

Also if he be made a *coroner*, this by some opinions is a discharge of his authority of justice. *Dalt. c. 3.*

But if he be created duke, archbishop, marquis, earl, viscount, baron, bishop, knight, judge, or serjeant at law, this taketh not away his authority of a justice of the peace. 1 Ed. 6. c. 7. *Dalt. c. 3.*

Also, no attorney, solicitor, or proctor, shall be a justice of the peace, during the time he shall continue in the practice of that business. 5 G. 2. c. 18. s. 2.

By *Holt Ch. J.* Though a man be a *mayor*, it doth not follow that he is a justice of the peace, for that must be by a particular grant in the charter. *L. Raym. 1030.* But although he be not a justice of the peace by the charter, yet there are many cases, wherein he hath the same power as a justice of the peace given unto him by particular statutes; as for instance, with regard to the customs, ale-houses, lord's day, swearing, gaming, weights, servants, fuel, leather, orchards, soldiers, and divers others.

Know ye that we have assigned you] This is founded on the statute of the 1 Ed. 3. c. 16. viz. For the better keeping and maintenance of the peace, the king will, that in every county, good men and lawful, which be no maintainers of evil, or barretors in the country, shall be assigned to keep the peace.

And from this act we are to date that great alteration in our constitution, whereby the election of conservators of the peace was taken from the people, and translated to the assignment of the king. *Lamb. 20.*

And here we may observe, that the commission hath two parts; or consisteth of two different assignments: By this first

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first assignment, any one or more justices have as well all the ancient power touching the peace, which the conservators of the peace had at the common law, as also that whole authority which the statutes have since added thereto. *Dalt. c. 5.*

Jointly and severally, and every one of you] Whatsoever any one justice alone may do, the same also may lawfully be done by any two or more justices; but where the law giveth authority to two, there one alone cannot execute it. *Dalt. c. 6.*

And yet where a statute appointeth a thing to be done by two justices or more, if the offence be any misdemeanor or matter against the peace, there upon complaint made of the offence, to any one of those justices, it seemeth that one of them may grant out his warrant to attach the offender, and to bring him before the same justice and the other justice so appointed (at some convenient place,) and then they to hear and determine the same. *Dalt. c. 6.*

But it seemeth, that when a thing is appointed by any statute to be done by or before one person certain, such thing cannot be done by or before any other: and by such express designation of one, all others are excluded, and their proceedings therein are *coram non iudice*. *Dalt. c. 6.*

Our justices] In that the king calls them *our* justices, their authority determines of course by his death or demise, so that he being once dead, or having given over his crown, they are no more his justices, and the justices of the next prince they cannot be, unless it shall please him afterwards so to make them. *Dalt. c. 3.*

But by the 1 *An. st. 1. c. 8. f. 2.* No patent or grant of any office or employment shall determine by the king's death or demise, but shall continue in force for six months after, unless in the mean time made void by the successor.

Also, before his death or demise, the king may determine the commission at his pleasure; and that either expressed, as by writ under the great seal, or by implication, by making a new commission, and leaving out the former justices names. But until notice, or publishing of the new commission, the acts of the former justices are good in law. *Dalt. c. 3.*

But to mayors and chief officers in corporations, which have the authority of justices of the peace, or of conservators of the peace, by grant under the king's letters patent to them and their successors, the authority remaineth, notwithstanding the king's death or demise. *Dalt. c. 3.*

Neither

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Neither can the king discharge these again at his pleasure; but yet such grants and charters may for some great and general defect, or miscarriage, in the execution of the powers therein granted, be repealed, and the liberties seized. *Dalt. c. 3.*

Justices to keep our peace] Although they are in no part of the commission called *keepers of the peace*, yet inasmuch as by the 18 *Ed. 3. c. 2.* they are expressly called *keepers of the peace*, and the principal end of their office is for the keeping of the peace, and their usual description in certioraries is by the name of *keepers of the peace*; it hath been adjudged, that in the caption of an indictment, *keepers of the peace and justices of our lord the king*, is good, without expressly naming them *justices of the peace*. 2 *Haw. 38.*

To keep our peace] These words seem to give them the authority which the conservators of the peace had at common law: and all that follows in the commission, seems an addition to the power of the antient conservators.

Our peace] It hath been resolved, that the description of justices of the peace, by the name of *justices of our lord the king to keep the peace*, is good, without saying, *the peace of our lord the king*; for that is necessarily implied. 2 *Haw. 38.*

Also, by these words *our peace*, when the king dies, the surety of the peace is discharged; for when he is dead, it is not *his* peace. *Crom. 124.*

In our county of W.] Here are two considerations; One is, that the justice cannot act when he is out of the county: And the other is, that when he is in the county, he can act for that county only, and his power extendeth to no other. But both these are to be understood with some limitations.

As to the former case, when he is out of the county; It is said, that the justices have no *coercive* power when out of the county; and therefore, that an order of bastardy, or for payment of labourers wages, made by them out of the county, is not binding. Yet it is said, that *recogninances* and *informations* voluntarily taken before them in any place, are good. 2 *Haw. 37.*

And *L. Hale* says, that a justice of the peace may do a ministerial act out of his county, as examining a party robbed whether he knows the felons; but that he cannot do a compulsory act, as committing a person for not giving recognizance. 2 *H. H. 50, 51.*

Also,

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Also, by the 9 G. c. 7. A justice dwelling in a city or precinct that is a county of itself, within the county at large, may act at his own dwelling house for such county at large.

And as to the latter case, wherein it is supposed that his power is limited unto that county only,—it is enacted by the 24 G. 2. c. 55. that if any person against whom a warrant shall be issued, shall escape, go into, reside, or be in any place out of the jurisdiction of the justice granting the warrant, either before or after the issuing thereof; any justice for the county or place, where such person shall so escape or be, upon proof on oath, of the hand writing of the justice granting such warrant, shall indorse his name thereon; which shall be a sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, to execute the same in such other county or place, and to carry the offender before the justice who indorsed the warrant, or some other justice or justices of that county, if the offence be bailable, and the offender be ready to give bail for his appearance at the next assizes or sessions for the county or place where the offence was committed; and such justice or justices shall take bail accordingly, and shall deliver the recognizance together with the examination or confession of the offender, and all other proceedings relating thereto, to the constable or other person, who shall, (on pain of 10l. to him who shall sue) deliver over the same to the clerk of assize, or clerk of the peace, where the offender is required to appear. And if the offence is not bailable, or he shall not give bail to the satisfaction of the justice before whom he is brought, the constable or other person shall carry the offender before a justice of the proper county or place, where the offence was committed, there to be dealt with according to law.

The form of which indorsement may be thus :

Westmorland. **F**ORASMUCH as proof upon oath of the hand writing of A. B. the justice within-mentioned hath been made before me J. P. esquire, one of his majesty's justices of the peace for the said county of Westmorland: I do hereby authorize A. C. who bringeth unto me this warrant, and all other persons to whom the said warrant is directed, to execute the same within the said county of Westmorland. Given under my hand, the ——— day of ——— in the year ———

And

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And the justice may further order (if he thinks fit) the party, according as he shall appearailable or notailable upon the face of the warrant, to be brought before himself or some other justice or justices of that county, or to be carried back into the county from whence the warrant did issue.

And to keep and cause to be kept all ordinances and statutes for the good of the peace } It seems certain, that by virtue hereof, they may execute all statutes whatsoever, made for the better keeping of the peace, and consequently those of *Winchester* and *Westminster*, and all others concerning the peace, made before the reign of *Ed. 3.* in whose time (as hath been said) justices of the peace were first instituted; for all those statutes were expressly mentioned in the ancient commissions of the peace, and have always been undoubtedly taken to be included in these general words of the present commission. And yet none of the statutes which ordain the office of justices of the peace, say any thing concerning the execution of the said former statutes; so that the power of justices of the peace in relation to those statutes seems entirely to depend on the king's commission, and yet hath always been unquestionably allowed. From whence it appears, that regularly the king, by his commission, may authorize whom he pleases to execute an act of parliament. *2 Haw. 37.*

But if no power be expressly given in any such statute to any one justice alone, he cannot proceed upon it, but he may prefer the cause at the sessions, and work it to a presentment upon the statute. *Dalt. c. 5.*

But besides the statutes relating to the peace, there are also many other statutes which are not specified in the commission, and yet are committed to the charge and care of the justices of the peace, by the express words of such statutes; and all such statutes are to them a sufficient warrant and commission of themselves, altho' they be not recited in the commission, and are to be executed by them, according as the same statutes themselves do severally prescribe and set down. *Dalt. c. 5.*

Statutes for the good of the peace } Although a praemunire is not within the letter of the commission, yet inasmuch as it is against the peace of the king and of the realm, any justice may cause a person to be apprehended for such offence, and take his examination, and informations against him, and certify the same to the king's bench or gaol delivery. *2 Haw. 39.* And the same may be said of other like offences.

And

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17

And for the quiet government of our people] Of our people;—yet it seemeth, that the subjects of a foreign prince coming into *England*, and living under the protection of our king, shall be subject to and have the benefit of the laws, in respect of the local allegiance which they owe to him. 2 *Haw.* 35. 1 *H. H.* 93, 94.

As well within liberties as without] By these words shall be intended such liberties and franchises which have return of writs, and not such as are counties of themselves, as *London, Norwich, York*, and such like. *Crom.* 8.

But yet from hence it seems clearly to follow, that they may execute their office within a town (not being a county of itself) altho' it have a special commission of the peace for its own limits, unless such commission have a clause, that no other justices except those named in it, shall any way concern themselves in the keeping of the peace within the liberties of such town; And it may be questioned, whether such a special clause in such a commission do absolutely make void the act of any county justice within such town; since the commission for the county seems as fully to give those named in it a jurisdiction over all such towns within the precinct of it, as such commission for a town doth exclude them. And the justices for the county seem to be under no necessity of informing themselves of the contents of a commission, which they have nothing to do with. Yet if they have express notice given them of such a restraining clause, and proceed to act within such town in defiance of it, they may perhaps be punishable for their contempt of the king's prohibition; and yet perhaps it may be questioned whether their acts be void, for the reasons abovementioned. 2 *Haw.* 37.

And lord *Hale* treating on the same subject, says, if the king by charter grant to a corporation, that the mayor, and recorder, or other, shall be justices within the same; yet if there be no words of exclusion, the justices of the county have a concurrent jurisdiction: But if this franchise of being justices be granted, *so that the justices of the county shall not intermeddle (se non intrumittant)*; then tho' a subsequent commission be granted in the county at large, it seems they have no jurisdiction in this corporation or town; yet it is questionable, whether an indictment in the franchise be void, or only a contempt in the justices. 2 *H. H.* 47.

But in the case of *Talbot and Hubble*, *T. 14 G. 2.* The question was, whether as the city of *New Sarum* had an exclusive commission of the peace, the justices of the county

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of *Wilts* could by virtue of the 12 C. 2. c. 23. & 15 C. 2. c. 2. act in excise matters within the city. This case was argued three times at the bar, and this term *Lee* Ch. J. delivered the resolution of the court: 1. That the crown might grant to any city, to have justices of their own within themselves, and exclude the county justices from intermeddling in the ordinary business of a justice of the peace. 2. That in such case, the act of the county justices would be void, and not to be considered only as a breach of the franchise. 3. That tho' the 12 C. 2. gives the jurisdiction in excise matters to the justices of the peace residing near the place where the forfeiture shall be made, or offence committed; yet it never was the design of the legislature, to make any alteration in the respective jurisdictions of the justices, but only to vest the excise jurisdiction in justices of counties, cities, and places, with respect to their several local jurisdictions within such places. *Str.* 1154.

Concerning their bodies] *Lambard* and *Dalton* both think it seems clear, that if a man is in fear that another will hurt his *servants*, or cattle, or other *goods*, the surety of the peace shall not be granted; but Mr. *Dalton* is of opinion, that if one threatens to hurt a man's *wife*, or *child*, he may crave the peace by virtue of these words. *Lamb.* 82. *Dalt. c.* 116.

Have used threats] It should seem from the many causes which from time to time have been adjudged sufficient to bind to the good behaviour, that this expression is not to be understood of *words* only, but of threatening *actions* likewise, or any thing whereby a man has just cause to apprehend the burning of his houses, or some bodily hurt to be done to him.

To find sufficient security] This is done by recognizance; by a reasonable intendment of law, more than by any especial law in that case provided. *Crom.* 125.

For the peace or their good behaviour] Lord *Hale* speaking of the statute of the 34 *Ed.* 3. c. 1. (on which Mr. *Crompton* says the power of justices to bind to the good behaviour is grounded) says, that this power of binding, tho' expressed generally, and without any time limited, yet is not intended to be perpetual, but in nature of bail, *viz.* to appear at such a day at their sessions, and in the mean time to be of good behaviour. 2 *H. H.* 136.

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19

In our prisons] The king's prison is the common gaol of the county: But by the statute of the 6 G. c. 19. the justices may commit vagrants and other criminals, and persons charged with small offences, either to the gaol, or to the house of correction, by their discretion, for such offences, or for want of sureties.

We have also assigned you, and every two or more of you] Here beginneth the second part of the commission, or the second assignment: All the business within which assignment belongeth to the sessions of the peace. *Dalt. c. 5.*

And by this it appeareth, that two justices may hold a sessions, but that one justice cannot. *Crom. 6, 7.*

Of whom any one of you the aforesaid A. B. C. D. &c. we will shall be one] This clause which gives power to two or more justices to hear and determine offences, requires that at least one of those justices be of that select number, which is commonly termed of the *Quorum* (from that word in the *Latin* commissions, *Quorum—unum esse volumus.*) For those of the *quorum* were wont to be chosen specially for their knowledge in the laws: And this was it which led the makers of several ancient statutes expressly to enact, that some learned in the laws should be put into the commission of the peace; and (to say the truth) all statutes that require the presence of the *quorum*, do secretly signify such a learned man. For albeit that a discreet person (not conversant in the study of the laws) may sufficiently follow sundry particular directions concerning this service of the peace; yet when the proceeding must be by way of presentment or indictment, upon the evidence of witnesses, and oaths of jurors, and by the order of hearing and determining, according to the straight rule and course of the law, it must be confessed that learning in the laws is very necessary. *Lamb. 48, 49.*

But learning being now greatly advanced and improved since the first institution of this office, this distinction is not of much use, but all or most of the justices are now equally assigned to be of the *quorum*; and by the statute of 26 G. 2. c. c. 27. no act, order, adjudication, warrant, indenture of apprenticeship, or other instrument done or executed by two or more justices, which doth not express that one or more of them is of the *quorum*, (altho' the statutes respectively do require it) shall be impeached, set aside, or vacated, for that defect only.

By the oath of good and lawful men] That is, by a jury sworn.

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Of all and all manner of felonies] That is, either by the common law, or by statute. *Crom. 8.*

Felonies] Tho' the commission doth not mention *murders* and *manslaughters*, by express name, but only felonies generally, yet by these general words, they have power to hear and determine murder and manslaughter, and also may take an indictment of *se defendendo*, contrary to the opinions of *Fitzherbert* and *Stamford*. But tho' the justices have this power, yet they do not ordinarily proceed to hear and determine these offences, and rarely other offences without clergy, both because of the monition and clause in their commission, in case of difficulty to expect the presence of the justices of assize; and also because of the direction of the statute of the 1 & 2 *P. & M. c. 13.* which directs justices of the peace, in case of manslaughter and other felonies, to take the examination of the prisoner, and the information of the fact, and put the same in writing; and then to bail the prisoner, if there be cause, and to certify the same with the bail at the next gaol delivery; And therefore in cases of great moment, they bind over the prosecutors, and bail the party ifailable, to the next gaol delivery. But in smaller matters, as petit larceny, and some cases within clergy, they bind over to the sessions; but this is only in point of discretion and convenience, not because they have not jurisdiction of the crime. *2 H. H. 46.*

So also, an inquisition of *self-murder*, if the body cannot be seen, and so not inquired of by the coroner, may be taken before justices of the peace; for it is a felony, and within the extent of their commission. *1 H. H. 414.*

So also, if a person hath committed *treason*, tho' the justices have no cognizance of it as treason, yet they have cognizance of it as a felony, and as a breach of the peace; and therefore a justice of the peace, upon information on oath, may issue his warrant to take the traitor, and may take his examination, and commit him to prison. *1 H. H. 580.*

Poisonings] The word in the latin commissions was *veneficia*; and before the statute of the 9 *G. 2. c. 5.* which abolisheth witchcraft, was in the *English* translations rendered witchcrafts.

Inchantments, forceries, arts magick] These also are abolished by the said statute, which enacts, that no prosecution shall thereafter be commenced against any person, for witchcraft, sorcery, enchantment, or conjuration.

And

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21

And from the words continuing in the commission, when the crime itself is abolished, we may observe the averſeness in the ſuperior courts from altering ancient forms.

Treſpaſſes] This is founded on the ſtatute of the 34 *Ed. 3. c. 1.* which enacts, that the juſtices aſſigned ſhall have power to reſtrain the offenders, rioters, and all other barators, and to chaſtiſe them according to their treſpaſs or offence.

And upon this Mr. *Hawkins* obſerves, that the word *treſpaſs* is of a very general extent, and in a large ſenſe not only comprehends all inferior offences, which are properly and directly againſt the peace, as aſſaults and batteries, and ſuch like, but alſo all others which are ſo only by conſtruction; as all breaches of the law in general are ſaid to be. Yet it hath been of late ſettled, that juſtices of the peace have no juriſdiction over forgery or perjury at the common law; the principal reaſon of which reſolution, he ſays, as he apprehended was, that in aſmuch as the chief end of the inſtitution of the office of theſe juſtices was, for the preſervation of the peace againſt perſonal wrongs, and open violence; and the word treſpaſs in its moſt proper and natural ſenſe, is taken for ſuch kind of injuries, it ſhall be underſtood in that ſenſe only in the ſaid ſtatute and commission, or at the moſt to extend to ſuch other offences only as have a direct and immediate tendency to cauſe ſuch breaches of the peace, as libels, and ſuch like, which on this account have been adjudged indictable before juſtices of the peace. 2 *Haw. 40.*

The word for treſpaſſes in the old latin commissions, is *transgreſſiones*.

Foreſtallings, regratings, ingroſſings] Over theſe offences the juſtices in ſeſſions have a juriſdiction given to them, by the ſtatute of the 5 & 6 *Ed. 6. c. 14.*

Extortions] The intent of this word is, to inquire of thoſe who have done exceſſive wrongs; for wrong done by any one is properly treſpaſs, but exceſſive wrong done by any one is called extortion; and this is more properly in officers, as ſheriffs, mayors, bailiffs, eſcheators, and other officers whatſoever (as well ſpiritual as temporal) who by colour of their office have done great oppreſſion and exceſſive wrong to the king's ſubjects, in taking exceſſive rewards or fees for doing their offices. *Crom. 8.*

The juſtices have no expreſs power given them over this offence by any ſtatute; upon which Mr. *Hawkins* obſerves, that juſtices of the peace have juriſdiction of all inferior crimes within their commission, whether ſuch crimes

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be mentioned in any statute concerning them or not; for that all such crimes are either directly, or at least by consequence and judgment of law, against the peace: And upon this ground principally, he says, as he apprehended, it was lately resolved, that they may take an indictment of extortion. 2 Haw. 40.

And of all and singular other crimes and offences of which the justices of our peace may or ought lawfully to inquire] Which general words seem to include the vast number of offences over which they have a jurisdiction given them by many statutes, and which are not particularly mentioned in the commission.

And also of all those who in companies against our peace in disturbance of our people with armed force have gone or rode] By these words they are to inquire of riots, routs, and all unlawful assemblies. *Crom. 8.*

Weights or measures] This clause was first established by the 34 Ed. 3. c. 5. And they have further power given herein by several subsequent statutes, all which statutes must be strictly pursued in relation to the several offences,

Selling victuals] Over this they have a jurisdiction given them, by the 2 & 3 Ed. 6. c. 15. intituled, *The bill of conspiracies of victuallers and craftsmen.*

And also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their offices have unduly behaved themselves] This clause is as ancient as the 4 Ed. 3. c. 2. on which it is founded.

And it hath been suffered to remain in the commission, not as of any necessity at all (since it is incident to every court of record to do correction upon whatsoever officers and ministers do serve them), but only for the plainer declaration of the power of these justices in that behalf, and for the more assured terrifying of such as shall either of contempt or negligence, do that which is amiss. *Lamb. 49.*

And to inspect all indictments so before you taken] But they cannot proceed upon indictments taken before coroners, or justices of oyer and terminer or gaol delivery; but on indictments taken before the sheriff in his turn they may proceed. *Hale's Pl. 168.*

Or before other late our justices] This is founded on the statute 11 H. 6. c. 6. which enacts, that no indictment, plea, suit or process shall be discontinued by a new commission; but the justices in the new commission, after they

they shall have the records of the same pleas and processes before them, shall have power to continue the said pleas and processes, and to hear and finally to determine the same, as the former justices might have done.

And to make and continue processes] This is by *venire*, *distringas*, *capias*, or *exigent*, as the case shall be. And it differs from a warrant, in that a warrant is only to attach and convene the party before indictment, and may be either in the name of the king or of the justice; but the process issues after indictment, and must be in the name of the king only. *Dalt. c. 193.*

Until they can be taken, surrender themselves, or be outlawed] For the process is sent out to this end, that either the party shall come in, to answer and to be justified by the law; or else that he shall for his contumacy be deprived of the benefit of the law. *Lamb. 521.*

Or be outlawed] It is observable that the power of the justices stops here, and goes no further; so that they cannot make out a *capias utlagatum*, but the outlawry must be certified into the king's bench. *Lamb. 521. 2 H. H. 52.*

But by the 12 Co. 103. they that have power to award process of outlawry, have also a power to award a *capias utlagatum*, as incident to their authority and jurisdiction.

Hear and determine] This power was first given to them by the statute of the 18 Ed. 3. *st. 2. c. 2.* and afterwards confirmed and enlarged by divers other statutes.

Yet this clause doth not in propriety make the justices of the peace justices of oyer and terminer, because that is a distinct commission; and therefore a statute limiting an offence to be heard and determined before justices of oyer and terminer, gives not the power therein to justices of the peace. *Hale's Pl. 165.*

And thereupon it is said, that although they have power to hear and determine felonies, yet they cannot deliver a person suspected thereof by proclamation (as justices of gaol delivery may) until an inquisition taken; but if an inquisition be taken, and an *ignoramus* found, they may deliver him as it seemeth. *2 H. H. 46, 47.*

Likewise, although commissioners of oyer and terminer may indict and try at the same sessions, yet it hath been ruled otherwise in case of justices of the peace, unless by consent; but certainly constant usage and learned opinion must give that exposition upon those resolutions, that it

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must extend only to popular actions or indictments for misdemeanors, and not in cases of felony. 2 H. H. 48.

By fines, ransoms, amerciaments, forfeitures, and other means—to chastise and punish] Hereby the justices are now armed with far more ample authority and power, than the ancient conservators of the peace were; for they had no power to convene the offender before them, nor to examine, hear, or determine the cause, nor to punish except in some few cases as mentioned before. *Dalt. c. 6.*

But the justices may not award any recompence to the party wronged, otherwise than by persuasion. *Dalt. c. 5.*

Nevertheless, these words are inserted, not as of necessity (for the punishment of all offenders is implied in the word *determine*), but for the plainer declaration of the justices power, and for the more assured terrifying of offenders. *Lamb. 49.*

If a case of difficulty shall happen to arise] That is a difficulty in point of law. *Crom. 6.*

Then let judgment in no wise be given] But yet if they list to proceed without the judge's advice, their judgment is not void; but it standeth good and effectual, until it be reversed by a superior court. *Lamb. 50.*

At certain days and places] That is, when they hold their sessions; which they are impowered and required to do, by several statutes.

Lastly, we have assigned you the aforesaid A. B. keeper of the rolls] This is in pursuance of the statute of the 37 H. 8. c. 1. which enacts, that the lord chancellor shall by commission assign such person to be *custos rotulorum* as the king shall by writing under his hand appoint.

III. The justice of the peace his oath of office.

On renewing the commission of the peace (which generally happeneth as any person is newly brought into the same) there cometh a writ of *dedimus potestatem* directed out of chancery, to some ancient justice (or other) to take the oath of him which is newly inserted, which is usually in a schedule annexed; and to certify the same into that court, at such a day as the writ commandeth. *Lamb. 53.*

And such as have once taken the oaths under a writ of *dedimus potestatem*, shall not be obliged, upon the issuing of a new commission, to sue out or have any other *dedimus potestatem* from the clerk of the crown; but the clerk of the

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the peace or his deputy, shall on such new commission being issued, prepare a parchment roll, with the oaths annexed to and usually taken under the said writ of *dedimus potestatem* ingrossed on such roll, and shall administer without fee to such justices the oaths in such roll specified; which justices having taken the said oaths shall subscribe their names on the said parchment roll: and the said roll shall be kept amongst the records of the sessions. 1 G. 3. c. 13. s. 2.

The form of which oath of office at this day is as followeth:

Ye shall swear, that as justices of the peace in the county of W. in all articles in the king's commission to you directed, you shall do equal right to the poor and to the rich, after your cunning, wit, and power, and after the laws and customs of the realm, and statutes thereof made: And ye shall not be of counsel of any quarrel hanging before you: And that ye hold your sessions after the form of the statutes thereof made: And the issues, fines, and amerciaments that shall happen to be made, and all forfeitures which shall fall before you, ye shall cause to be entered without any concealment (or embezzling) and truly send them to the king's exchequer. Ye shall not let, for gift or other cause, but well and truly ye shall do your office of justice of the peace in that behalf: And that you take nothing for your office of justice of the peace to be done, but of the king, and fees accustomed, and costs limited by statute. And ye shall not direct, nor cause to be directed, any warrant (by you to be made) to the parties, but ye shall direct them to the bailiffs of the said county, or other the king's officers or ministers, or other indifferent persons, to do execution thereof. So help you god.

This oath seems to be founded on the statute of the 13 R. 2. c. 7. which enacts, that the justices shall be sworn, duly and without favour, to keep and put in execution all the statutes and ordinances touching their offices.

Besides this oath of office, he is likewise to take the oath mentioned in the foregoing section concerning his qualification by estate; and he must, within six months after, take also the oaths of allegiance, supremacy, and abjuration, and make and subscribe the declaration against transubstantiation, at the sessions, as other persons admitted to offices.

IV. Of fees to be taken by justices of the peace.

In the oath of office abovementioned are these words; *And that you take nothing for your office of justice of the peace to be done, but of the king, and fees accustomed, and costs limited by statute.* And

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And by statute their fees in many cases are limited and ascertained; as is noted under the respective titles where they fall in throughout this book.

And for the rest, it is provided generally by the statute of the 26 G. 2. c. 14.

That the justices at *Midsummer* sessions 1753, shall settle a table of their clerks fees; which being approved by the justices at the next succeeding sessions, with such alterations as the justices there shall think proper, shall be laid before the judges at the next assizes, who shall confirm the same with such alterations, additions, or abatements, as to them shall appear just and reasonable: And the sessions from time to time may make any other table of fees, and after the same shall have been approved by the next succeeding sessions, shall lay the same before the judges at the next assizes, who may ratify the same in like manner: and no table of fees shall be valid, until confirmed by the judges. *f. 1.*

And if after three months from the time that such table shall be confirmed, any justice's clerk shall demand or take any other or greater fee than shall have been so confirmed, he shall forfeit 20 l. to him who shall sue in three months. *f. 2, 4.*

And the said table of fees shall be deposited with the clerk of the peace, who shall cause true copies thereof to be kept constantly in a conspicuous part of the room where the sessions are held, on pain of 10 l. *f. 3.*

And by the 27 G. 2. c. 16. In *Middlesex*, the like table shall be confirmed, by the two lord chief justices, and the lord chief baron or any two of them. *f. 4.*

V. Some general directions relating to justices of the peace, not falling under any particular title of this book.

1. Regularly, justices of the peace ought not to execute their office, in their own case; but cause the offenders to be convened or carried before some other justice, or desire the aid of some other justice being present. *Dalt. c. 173.*

By *Holt Ch. J. M. 10 W.* The mayor of *Hereford* was laid by the heels, for sitting in judgment in a cause where he himself was lessor of the plaintiff in ejectment, though he by the charter was sole judge of the court. 1 *Salk.* 396.

H. 3 An.

Justice being a party.

H. 3 An. The case of *Foxham* Tithing in the county of *Wilts.* A justice of the peace was surveyor of the highways, and a matter which concerned his office coming in question at the sessions, he joined in making the order, and his name was put in the caption. But by *Holt Ch. J.* It ought not to be; as if an action be brought by my lord chief justice *Trevor* in the court of common pleas, it must be before *Edward Nevill*, knight, and his associates, and not before *Thomas Trevor*, &c. And it was quashed. 2 *Salk.* 607.

And lord chief justice *Raymond*, who had an estate in the parish of *Abbots Langley*, went off the bench, when an order relating to a pauper there came before the court. *Str.* 1173.

And yet if the justice shall deal in his own case, it seems in some cases justifiable; as when a justice shall be assaulted, or (in the doing his office especially) shall be abused to his face, and no other justice present with him; then it seems he may commit such offender until he shall find sureties for the peace or good behaviour, as the case shall require. But if any other justice be present, it were fitting to desire his aid. *Dalt. c.* 173. *Str.* 420, 421.

And by the 16 G. 2. c. 18. The justices may do all things appertaining to their office, so far as the same relates to the laws for the relief, maintenance, and settlement of the poor; for passing and punishing vagrants; for repair of the highways; or to any other laws concerning parochial taxes, levies, or rates; notwithstanding that they are rated, or chargeable with the rates within any place affected by such their acts. Provided, that this shall not empower any justice for any county at large, to act in the determination of any appeal to the quarter sessions of such county, from any order, matter, or thing, relating to any such parish, township, or place, where such justice is so charged or chargeable.

And as it is unjust in many cases for the magistrate to act in his own cause, so it is also imprudent: To which purpose the advice of lord *Coke* is applicable, who upon the occasion of mentioning a certain judge, who made a settlement of his estate which was void in law, and brought an action in his own name, which all the other judges, of his own shewing in the count, were of opinion did not lie, makes this observation, that it is not safe for any man (be he never so learned) to be of counsel with himself in his own cause, but to take advice of other great and learned men; and the reason he gives is, for that men are generally

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rally more foolish in their own concerns, than in those of other people. 1 *Inst.* 377.

Acting without authority.

2. If a justice exceed his authority, in granting a warrant, yet the officer must execute it, and is indemnified for so doing; but if it be in a case wherein he hath no jurisdiction, or in a matter whereof he has no cognizance, the officer ought not to execute such warrant; so that the officer is bound to take notice of the authority and jurisdiction of the justice. *Cro. Car.* 394. 10 *Co.* 76.

Thus if a justice send a warrant to a constable to take up one for slander, or the like, the justice hath no jurisdiction in such cases, and the constable ought to refuse the execution of it. *Wood b.* 1. c. 7.

But by the 24 *G.* 2. c. 44. If the officer in six days after demand shall grant to the party complaining a perusal and copy of the warrant, he shall not be liable to any action, but the justice only.

Whether they may supersede their own proceedings.

3. *T.* 2 *G.* *Pancras* and *Rumbald*. There was an order of two justices for the removal of a poor person, from the parish of *Pancras* to *Rumbald*. Within three days, the justices reciting that they were surprized, superseded it; and command the church-wardens to return the former order to be cancelled. It was insisted, that the justices could not issue such a *supersedeas*. But by the court, The *supersedeas* is well sent by the justices, and to prevent the charge of an appeal. And the last order was confirmed. *Str.* 6.

To condemn no man unheard.

4. In summary convictions, the party ought to be heard, and for that purpose ought to be summoned in fact; and if the justice proceed against a person without summoning him, it would be a misdemeanor in him, for which an information would lie. 1 *Salk.* 181. *L. Raym.* 1407. *Str.* 678.

But before an information is granted, the court will first require, that the conviction be removed before them. *Str.* 915.

E. 11 *G.* 2. *K.* and *Harwood*. The defendant being a justice of the peace, was convicted on an information, for a conviction by him made of an alehouse-keeper, who was never summoned or heard. It was moved, as of course, to dispense with his appearance. This was opposed, unless there was some reason given, or affidavit made. And upon debate the court resolved, it was not of course; and the defendant afterwards appeared in person. *Str.* 1088.

Refusing to proceed in a cause depending before them.

5. *M.* 9 *G.* *K.* against *Todd* and others. By the 6 *G.* c. 21. the justices of the peace have a jurisdiction given them

them in some cases to receive an information, and make their determination, upon a seizure of brandy. Upon information exhibited by the officer of the customs, the fact appeared not to warrant the seizure; but the justice, in favour of the officer refused to dismiss the information, so as the owners might have their brandy again. And now a *mandamus* was moved for, to compel him to determine the matter; which was granted accordingly. *Str.* 530.

H. 7 G. K. against *Newton* and others. By the 1 G. c. 13. §. 11. it is enacted, that two justices may summon any person to take the oaths before them; and if they do not appear, then on oath of serving such summons, the justices are to certify the same to the quarter sessions, where if the party so summoned doth not appear to take the oaths, he shall stand convicted of recusancy. The defendants were justices of the peace, and issued their summons accordingly; but coming afterwards to understand, that the party was a gentleman of fashion, and not suspected to be against the government; lest a transaction of this nature should be an imputation upon him, they refused to give the prosecutor his oath of the service of such summons, that the matter might go no further. And now upon motion against them for an information, the court declared, that the justices had no discretionary power to refuse to put the act in execution, and therefore granted an information against them. *Str.* 413.

6. Where a special authority is given to justices out of sessions, it ought to appear in their orders, that that authority was exactly pursued. 2 *Salk.* 475.

Authority to appear on the face of their orders.

7. In all cases where justices may hear and determine out of sessions (*viz.* on their own view, or confession, or oath of witnesses) the justices ought to make a record in writing under their hands of all the matters and proofs; which record notwithstanding in many cases they may keep by them. *Dalt.* c. 115.

To make a record of their proceedings.

8. And if upon such conviction, the offender is to be fined to the king, then the justices are to estreat such fine, and to send the estreat into the exchequer, whereby the barons of the exchequer may cause the said fine or forfeiture to be levied for the king's use. *Dalt.* c. 115.

To estreat fines.

9. Lord *Hale* says (contrary to the opinion of Lord *Coke*) that the justices out of sessions may issue their warrants for apprehending persons charged of crimes within the cognizance of the sessions, and bind them over to appear at the sessions, although the offender be not yet indicted. 1 *H. H.* 579.

Whether a justice may issue his warrant for offences cognizable only in the sessions.

But in another place he says, this seemeth doubtful; and that one thing which seemeth to make against it is, that in most

Justices of the peace.

most cases of this nature, though the party were indicted, or an information preferred, yet a *capias* was not the first process, but a *venire facias*, and *distingas*. 2 H. H. 113.

And Mr. *Hawkins* on this point saith thus: It seems that anciently no one justice could legally make out a warrant for an offence against a penal statute, or other misdemeanor, cognizable only by a sessions of two or more justices; for that one single justice hath no jurisdiction of such offence, and regularly those only who have jurisdiction over a cause can award process concerning it; yet the long, constant, universal and uncontrolled practice of justices of the peace, seems to have altered the law in this particular, and to have given them an authority in relation to such arrests, not now to be disputed. 2 *Haw.* 84.

However, as the authority of justices of the peace is by the statute law, and no statute hath expressly given to them such power (unless in special cases; which operate against, rather than establish, a general power); it seemeth best in ordinary cases, and more consonant to the practice of the superior courts, to issue a summons against the offender, and not a warrant, in the first instance; unless in cases of felony, or where the offender in other respects is to suffer corporal punishment.

Not to trust to
abstracts and
abridgments.

10. Forasmuch as most of the business of a justice of the peace, consisteth in the execution of divers statutes, which cannot be sufficiently abridged but that they will come short of the substance and body thereof; therefore it shall be safest for the justices to have an eye to the statutes at large, and thereby to take their further and better directions, for their whole proceedings: for (as lord *Coke* observeth) abridgments are of good and necessary use to serve as tables, but not to ground any opinion, much less to proceed judicially upon them. *Dalt. c. 173.*

Not to trust to
clerks and transcribers.

11. In like manner, it is not safe for them to trust altogether to the care and judgment of their clerks, in drawing warrants and other instruments; much less, to the skill of parish officers in making copies of orders, and the like: but rather it is adviseable to have good printed forms; and instead of copies to be taken upon occasion, to make out duplicates.

VI. Their indemnity and protection by the law in the right execution of their office; and their punishment for the omission of it.

His indemnity.

1. A justice of the peace is strongly protected by the law, in the just execution of his office.

Thus

Thus in the first place, he is not to be slandered or abused; as appears by the following report: *M. 11 G. Aston and Blagrave*. The plaintiff declared, that he was a justice of the peace, and that upon a *colloquium* of him and the execution of his office, the defendant said, *You are a rascal, a villain, and a liar*. After verdict for the plaintiff it was moved in arrest of judgment, that these words are not *actionable*. It was urged for the plaintiff; There is a great difference between magistrates and common tradesmen: words of the latter, must affect them in their particular way of dealing; but any thing that tends to impeach the credit of the former, is *actionable*: And although an *indictment* might not lie for these words, as perhaps not tending to a breach of the peace, yet nevertheless they are *actionable*; for in many cases words are *actionable*, which are not *indictable*. After consideration, *Pratt Ch. J.* delivered the opinion of the court, that though *rascal* and *villain* were uncertain, yet being joined with *liar*, and spoken of a justice of the peace, they did import a charge of acting corruptly and partially, and therefore there ought to be judgment for the plaintiff. *Str. 617. L. Raym. 1369.*

Afterwards, *T. 15 G. 2. Kent and Pocock*. These words spoken of a justice of the peace in the execution of his office, and relating thereto, were held *actionable*, viz. *Mr. Kent is a rogue*; according to the aforesaid case of *Aston and Blagrave*. *Str. 1168.*

E. 7 G. K. and Revel. The defendant was *indicted*, for saying of Sir Edward Lawrence a justice of the peace, in the execution of his office, *You are a rogue and a liar*. It was moved, after verdict for the king, in arrest of judgment, that though the justice might have committed him for the contempt, yet the words are not *indictable*, since it is not to be presumed they would provoke the justice to a breach of the peace, which is the reason why *indictments* have been held to lie for words. But by the court, The allowing he might be committed, shews they were *indictable*. It is true, the justice may make himself judge and punish him immediately; but still, if he thinks proper to proceed less summarily by way of *indictment*, he may. The true distinction is, that where the words are spoken in the presence of the justice, there he may commit; but where it is behind his back, the party can be only *indicted* for a breach of the peace. Judgment for the king. *Str. 420.*

T. 14 G. 2. K. and Pocock. An *information* was moved for against the defendant, on account of words spoken of

Mr.

Thus

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Mr. *Kent* a justice of the peace. And the affidavit stated, that in a conversation about a warrant granted by Mr. *Kent*, the defendant asked, if Mr. *Kent* was a sworn justice; and being answered, to be sure he was, else he would not act, the defendant replied, *If he is a sworn justice he is a rogue, and a forsworn rogue.* To this it was objected, that the words were not spoken to him in the execution of his office, but only in relation to what he had formerly done: And by the court, There ought to be no information; it is not the same insult and contempt, as if spoken to him in the execution of his office, which would make it a matter indictable. *Str.* 1157.

Nevertheless, according to the distinction in the afore-said case of *Aston* and *Blagrave*, although an *information* or *indictment* might not lie, yet it doth not follow but that the words were *actionable*; and so it seemeth to have been held in the case last but one abovementioned, of *Kent* and *Peacock*, which seemeth to have been no other than an *action* brought for this very same offence, after it had been determined that an *information* would not lie.

In the next place; he is not punishable at the suit of the party, but only at the suit of the king, for what he doth as judge, in matters which he hath power by law to hear and determine without the concurrence of any other; for regularly no man is liable to an *action* for what he doth as judge: but in cases wherein he proceeds ministerially, rather than judicially, if he acts corruptly, he is liable to an *action* at the suit of the party, as well as to an *information* at the suit of the king. 2 *Haw.* 85.

And more explicitly, in the case of the king against *Young* and *Pitts*, esquires, justices of the peace for *Wiltshire*, which was upon an *information* moved for against the justices, for arbitrarily and unreasonably refusing to grant an alehouse licence; lord *Mansfield* Ch. J. declared, that the court of king's bench hath no power or claim to review the reasons of justices of the peace, upon which they form their judgments in granting licences, by way of appeal from their judgments, or over-ruling the discretion in that behalf intrusted to them. But if it clearly appears, that the justices have been partially, maliciously, or corruptly influenced in the exercise of this discretion, and have (consequently) abused the trust reposed in them, they are liable to prosecution, by indictment, or information; or even, possibly, by action, if the malice be very gross and injurious. If their judgment is wrong, yet their heart and intention pure, God forbid that they should be punished.

punished. And he declared that he should always lean towards favouring them; unless partiality, corruption, or malice shall clearly appear. Mr. justice *Denison* also expressly allowed the discretionary power of the justices in granting licences, without appeal from their judgments, or having their just and honest reasons reviewed by any body. But yet, an improper and unjust exercise of their discretion, he said, ought to be under controul. But it must be a clear and apparent partiality, or wilful misbehaviour, to induce the court to grant an information: Not a mere error in judgment. Mr. justice *Foster* concurred in the same general principles. And Mr. justice *Wilmot* was also very explicit, that the sole discretion of granting licences is in the justices of the division. Which being so, the rule is invariable, that this court will never interpose to punish a justice of the peace for a mere error in judgment. Therefore, even supposing the justices in the present case to have been mistaken from beginning to end; yet there is no ground, from any of the affidavits, to infer any partiality malice or corruption. And the court, being unanimously of opinion, that the justices had acted in this affair with candour and impartiality, discharged the rule to shew cause, with costs. *Burrow.* 556.

In the next place, by the 7 *J. c.* 5. it is enacted, that if any action shall be brought against a justice for any thing done by virtue of his office, he may plead the general issue, and give the special matter in evidence; and if he recovers, he shall have double costs.

And by the 21 *J. c.* 12. such action shall not be laid, but in the county where the fact was committed.

And moreover, by the 24 *G. 2. c.* 44. it is enacted, that no writ shall be sued out against, or copy of any process at the suit of a subject shall be served on any justice, for any thing done by him in the execution of his office; until notice in writing shall have been given to him, or left at his usual place of abode, by the attorney for the party, one month before the suing out, or serving the same; containing the cause of action, and indorsed with his name and place of abode; for which he shall be intitled to a fee of 20 s. and no more. *f.* 1.

And unless it is proved upon the trial, that such notice was given, the justice shall have a verdict and costs. *f.* 3.

And the justice may at any time, within one month after such notice, tender amends to the party complaining, or to his attorney; and if the same is not accepted, he may plead

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plead such tender in bar to the action, together with the plea of not guilty, and any other plea with leave of the court; and if upon issue joined, the jury shall find the amends tendered to have been sufficient, they shall give a verdict for the defendant; and in such case, or if the plaintiff shall be nonsuit, or discontinue, or if judgment be given for the defendant upon demurrer, the justice shall be intitled to the like costs, as if he had pleaded the general issue only: And if the jury shall find that no amends, or not sufficient, were tendered, and also against the defendant on such other plea, they shall give a verdict for the plaintiff, and such damages, as they shall think proper, which he shall recover with costs. *f. 2.*

And if the justice shall neglect to tender amends or shall have tendered insufficient, before the action brought, he may, by leave of the court before issue joined, pay into court such sum as he shall see fit; whereupon such proceedings and judgment shall be had, as in other actions where the defendant is allowed to pay money into court. *f. 4.*

And no evidence shall be permitted to be given by the plaintiff on trial, of any cause of action, except such as is contained in the notice. *f. 5.*

And no action shall be brought against any constable or other officer, or any person acting by his order and in his aid, for any thing done in obedience to the warrant of a justice, until demand hath been made, or left at the usual place of his abode, by the party, or by his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demand: And if after compliance therewith, any such action shall be brought, without making the justice, who signed the warrant, defendant; on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. And if such action be brought jointly against the justice and constable, on proof of such warrant the jury shall find for the constable: And if the verdict shall be given against the justice, the plaintiff shall recover his costs against him, to be taxed in such manner by the proper officer, as to include such costs as the plaintiff is liable to pay to such defendant, for whom such verdict shall be found. *f. 6.*

And moreover, no action shall be brought against any justice for any thing done in the execution of his office, unless commenced within six months after the act committed. *f. 8.*

2. On the other hand, it is enacted likewise, by the last ^{His punishment,} mentioned statute, that where the plaintiff in such action against a justice, shall obtain a verdict, and the judge shall in open court certify on the back of the record, that the injury for which such action was brought, was wilfully and maliciously committed, the plaintiff shall have double costs. 24 G. 2. c. 44. s. 7.

Moreover, if a justice will not, on complaint to him made, execute his office, the party grieved may complain to the judges of assize, or to the lord chancellor; and upon examination, if it appeareth that the complaint is true, the chancellor may put him out of the commission, and he shall be punished moreover according to his desert. *Crom. 7.*

But the most usual way of compelling them to execute their office in any case, is by writ of *mandamus* out of the king's bench.

And in actions brought against the justices, (for misdemeanor in the execution of their office), they are obliged to shew the regularity of their convictions; and the informations laid before them, upon which the convictions are grounded, must be produced and proved in court. *Seff. Cas. V. I. p. 372. Hill and Bateman. 12 G.*

And by the 18 G. 2. c. 20. If any person shall act as justice, without a qualification of 100 l. a year, and without making oath at the sessions, as before is mentioned; he shall forfeit 100 l. half to the poor, and half to him that shall sue, with full costs.

Other matters relating to the very extensive office of this magistrate, may be found under their proper heads, in almost every title of this book.

Labourers. See *Servants.*

Landlord and tenant. See *Distress.*

Land tax.

THE land tax hath succeeded into the place of the ancient fifteenths and subsidies: and the land tax acts are framed in many respects after the manner of the ancient subsidy acts.

Land tax.

We meet with the payment of *fifteenths* as far back as the statute of *Magna Charta*; in the conclusion of which, the parliament grant to the king, for the concessions by him therein made, *a fifteenth part of all their moveable goods.*

This taxation was originally set upon the several *individuals*. Afterwards, to wit, in the eighth year of Edward the third, a certain sum was rated upon every town, by commissioners appointed in the chancery for that purpose, in like manner as commissioners are now appointed by the several land tax acts for carrying the said acts into execution; which commissioners rated every town at the fifteenth part of the value thereof at that time, and their taxation was recorded in the exchequer: And the inhabitants rated themselves proportionably for their several parts, to make up the general sum upon the whole township. This *fifteenth* amounted in the whole to 29,000 l. or near thereabouts.

But as the necessities of government multiplied, and the kingdom became more populous, and the values of things increased, this fifteenth was insufficient for the occasions of the publick; and thereupon the number of fifteenths was augmented to two or three fifteenths. Which still proving defective, another and quite different taxation was superadded, namely, the *subsidy*; which was an aid to be levied of every subject of his lands or goods, after the rate of 4 s. in the pound for lands, and 2 s. 8 d. for goods. And accordingly, in the ancient subsidy acts, there is first a grant of so many *fifteenths*, and then the grant of a *subsidy*.

These *fifteenths* were certain, as hath been said, from the time of the eighth of Edward the third; but the *subsidy* was uncertain, and amounted antiently to about 70,000 l.; and a subsidy of the clergy at the same time (including the monasteries) was 20,000 l. In the 8 *Eliz.* a subsidy amounted to 120,000. In the 40 *Eliz.* it was not above 78,000 l. Afterwards it fell to 70,000 l.; and, by reason of a loose and uncertain way of assessing the same, kept continually decreasing, until the parliament found it necessary to change the method of taxation, and in the time of the long parliament certain sums were fixed upon the several counties; which course of taxation still continues. 2 *Inst.* 77. 4 *Inst.* 33, 34. *Hume's Hist. of Engl.* vol. 5. p. 126, 7. *Gillb. Excheq.* ch. 14.

The land tax acts are annual, but with little variation. The act here inserted is that of the 5 G. 3. c. 5. which, according to the natural order of the business, distributes itself under the following heads:

- I. *The first meeting of the commissioners, for issuing precepts to return assessors.*
- II. *The second meeting : Charge to the assessors, and therein concerning the manner of laying the assessment.*
- III. *The third meeting : Signing the assessment, with warrant to collect.*
- IV. *Fourth meeting : The appeal.*
- V. *Collecting.*
- VI. *Collector paying to the receiver general.*
- VII. *Receiver paying into the exchequer.*
- VIII. *Duplicates to be transmitted.*
- IX. *General penalty on officers not doing their duty.*
- X. *Indemnity of officers in doing their duty.*

I. *The first meeting of the commissioners, for issuing precepts to return assessors.*

1. Persons who were appointed commissioners by the act of the 32 G. 2. (and certain others by name, 3 G. 3. c. 4. 5 G. 3. c. 21.) shall be commissioners to put this act in execution. Commissioners.

But no person shall be capable to act as commissioner in any county or riding at large (the counties of *Merioneth, Cardigan, Carmarthen, Glamorgan, Montgomery, Pembroke, and Monmouth* excepted) unless he be seised of lands, tenements, or hereditaments, being freehold, copyhold, or leasehold, over and above all ground rents, incumbrances and other reservations, payable out of or in respect of such leasehold estates, which were taxed or did pay, last year, in the same county or riding, for the value of 100 l. a year of his own estate.

But this shall not extend to commissioners being inhabitants of cities, boroughs, towns corporate, or cinque ports; or the inns of court or chancery.

And no attorney or solicitor, or person practising as such, shall act as commissioner, without having 100 l. a year, as above. Nor shall any receiver general, or collector of any aid granted to his majesty, act as commissioner.

And if any commissioner disabled shall presume to act, he shall forfeit 50 l. to him who shall sue (in six months. 5 G. 3. c. 21.)

And if there are not a sufficient number of qualified commissioners within any city or place for which commissioners are particularly appointed, the commissioners of the county may act therein.

To take the oaths.

2. And no commissioner shall act, until he hath taken the oaths of allegiance, supremacy, and abjuration, which shall be administered to him by two or more commissioners, on pain of 200l. to the king.

Time and place of meeting.

3. And they shall meet at the most usual and common places of meeting, on or before *April 30*.

Subdividing.

4. At which first meeting, they may subdivide themselves, and the other commissioners not then present, so as three or more be appointed for each division; but shall not thereby restrain any commissioners from acting in any other part of the county.

And shall set down in writing, who, and what number of the commissioners shall act in each division, and shall deliver a copy thereof to the receiver general.

Receiver general, who.

5. Which receiver general shall be appointed by the king, or in pursuance of his directions; and shall have a salary allowed to him by the lords of the treasury, not exceeding 2d. a pound.

And the death or removal of a receiver general shall be notified to two or more commissioners, by the commissioners for the affairs of taxes, before the time of the first quarterly payment.

And the receiver general shall give notice under his hand and seal of his appointing a deputy (which appointment shall be also under hand and seal) to two or more commissioners, in ten days after the first meeting, and in ten days after the death or removal of a deputy.

Commissioners to set down the sums on each division.

6. And the said commissioners, at such first meeting, shall set down in writing the sums to be charged on each division, in proportion to the sums which were assessed thereon by the land tax act, in the fourth year of the reign of W. & M.

Note: There is said to have been a hearing on *Feb. 10. 1746*, before the barons of the exchequer, upon the question, whether the commissioners of the land tax, at their general meetings for the city and liberty of *Westminster*, have power to alter the *quota's* in their several parishes, which was continued next day; and that the barons declared they could not depart from the *4 W. & M.* and the parliament only could redress the aggrieved parishes.

But where the proportion upon any division shall exceed 4s. in the pound, by reason of the estates of papists and

and nonjurors having been charged double within such division, in the 4th W. & M. (the sums raised in that year on every division governing the proportions at present) and the said estates are not now liable to pay double, by reason of their being in the hands of persons who have taken the oaths; in such case two or more commissioners may certify the same to the barons of the exchequer, who may order so much of the proportion upon such division to be abated, as exceeds the full sum of 4s. in the pound upon the estates therein.

7. Also, at such first meeting, two or more commissioners shall direct their several or joint precepts (A) to such inhabitants, high constables, petty constables, bailiffs and other officers and ministers, and such number of them as they shall think most convenient, to be presentors and assessors, requiring them to appear before the said commissioners, at such time and place, not exceeding eight days after the date of such precept, as they shall appoint.

Issuing precepts to return assessors.

They shall also appoint assessors and collectors in privileged and extra-parochial places.

But no person in a city, borough, or town corporate, shall be compelled to be an assessor or collector out of the limits thereof.

II. The second meeting: Charge to the assessors, and therein concerning the manner of laying the assessment.

1. Assessor not appearing, without lawful excuse to be made out on the oath of two witnesses; or appearing, and refusing to serve, shall forfeit to the king, not more than 5l. nor less than 40s.

Assessor not appearing.

2. The commissioners shall openly read, or cause to be read to the assessors, the several rates, duties, and charges, and openly declare the effect of their charge unto them, and how and in what manner they ought to make their assessments, and how to proceed in the execution of the act.

Charge to the assessors.

Which shall be in the manner following; that is to say,

3. Towards raising 2,037,874l. 1s. 10d. at 4s. in the pound in Great Britain, of which England shall raise 1,989,920l. 8s. and Scotland 47,954l. 1s. 2d. the charge upon personal estates shall be thus: viz. All persons having an estate in goods, wares, merchandizes, or other chattels, or personal estate whatsoever, within Great Britain or without, belonging to or in trust for them, shall pay 4s. in the

Assessment on personal estates.

pound, according to the true yearly value thereof; that is to say, for every 100l. of such ready money and debts, and for every 100l. worth of goods, 20s. and after that rate for every greater or lesser quantity. Excepting and deducting thereout such sums as they *bona fide* owe, and such debts as the commissioners shall judge desperate; and except stock upon lands, and household stuff, and debts and loans owing from his majesty.

Every person having any publick office or employment and their substitutes shall pay 4s. for every 20s. of their salaries. Except military officers in the army or navy.

Every person having an annuity or pension out of the exchequer, or out of any branch of the revenue, or to be paid by any person whatsoever, shall pay 4s. for every 20s. Except salaries charged upon lands which pay to the full, and except annuities especially exempted by act of parliament. And except annuities paid to superannuated commission or warrant sea officers, or to the widows of sea officers slain in the service of the crown. And except money lent or advanced to the government, on the security of the act. And except turnpike tolls, and the salaries of turnpike officers.

On real estates.

4. The charge upon real estates shall be as follows:— That the intire sum may be raised, all manors, messuages lands and tenements; all quarries, mines of coal, tin and lead, copper, mundick, iron, and other mines, iron mills, furnaces, and other iron works; salt springs, and salt works; all allom mines and works; all parks, chafes, warrens, woods, underwoods, coppices; all fishings, tithes, tolls, annuities, and all other yearly profits; and all hereditaments whatsoever—shall be charged with as much equality and indifference as possible, by a *pound rate*, to make up the several sums charged by the act on each county or place.

Rent charges.

5. Where manors, messuages, lands, tenements, tithes, and hereditaments are incumbered with rent charges, annuities, fee-farm rents, rent service or other rents thereupon reserved or charged, the owners thereof may detain out of the payment of the same, a proportionable share of the land tax; provided that such rent or annual payment amount to 20s. a year or more.

Fee-farm rents of the crown.

6. Receivers of fee-farm rents, or other chief rents due to the king, or to any person claiming by grant or purchase from him (by which are meant such fee-farm rents only, as are answerable to the king, or have been purchased from the crown by virtue of the statutes of 22 C. 2. c. 6. and

22 & 23 C. 2. 2. 24. or one of them, and which before *March 25, 1693*, were not payable to any college, hospital, reader in the universities, or other person exempted) shall allow 4 s. for every pound of the said rents, and so proportionably for any greater sum than 10 s. to the party paying the same; on pain of 20 l. to the party grieved, with full costs. Provided that such deduction or allowance do not exceed the sum assessed on the whole estate out of which such purchased fee-farm rent issues.

7. But nothing herein shall charge any college or hall in *Oxford* or *Cambridge*, or the colleges of *Windfor*, *Eaton*, *Winton* or *Westminster*, or the corporation of the governors of the charity for the relief of the poor widows and children of clergymen, or the college of *Bromley*, or any hospital for or in respect of the sites of the said colleges, halls, or hospitals, or any of the buildings within the walls or limits of the same: Or any master, fellow, or scholar, or exhibitioner of any such college or hall, or any reader, officer, or master of the said universities, colleges, or halls, or any masters or ushers of any schools; for or in respect of any stipends, wages, rents, profits, or exhibitions whatsoever, arising or growing due to them in respect of the said several places or employments: Or any of the lands which before *March 25, 1693*, did belong to the sites of any college or hall, or to *Christ's* hospital, *St. Bartholomew*, *Bridewell*, *St. Thomas*, and *Bethlehem* hospitals in *London* and *Southwark*; or any other hospitals or alms-houses, in respect of any rents, or revenues, which before *March 25, 1693*, were payable to them, being to be received and disbursed for the immediate use and relief of the poor of the said hospitals and alms-houses only.

Charities exempted.

But this shall not discharge any tenants of any houses or lands belonging to the said colleges, halls, or hospitals, alms-houses, or schools, who by their leases or other contracts are obliged to pay and discharge all rates, taxes, and impositions.

In general, all such lands, revenues, or rents belonging to any hospital or alms-house, or settled to any charitable or pious use, as were assessed in the 4 *W. & M.* shall be liable; and no other lands, revenues or rents, then belonging to any hospital or alms-house, or settled to any charitable or pious use, shall be charged, taxed, or assessed.

And if there shall be any question, how far any lands or tenements, belonging to any hospital or alms-house, not exempted by name, shall be liable, the same shall be finally determined at the appeal.

But

But lands given to charities since the 4 *W. & M.* shall not be exempted, because the sums upon the several divisions being now charged as they were in that year, if any lands, not then exempted, should now by being appropriated to charities or otherwise become exempted, this would lay a greater burden upon all the rest. But charities then exempted do lay no greater burden upon the rest now; because they were not charged in the general sum upon the division at that time. And such charities were exempted all along in the subsidy acts before.

Poor exempted.

8. No poor person shall be charged with, or liable to the pound rate, whose lands, tenements, or hereditaments are not of the full yearly value of 20s. in the whole.

Who shall assess the assessors. In what places or divisions persons shall be assessed.

9. The commissioners shall assess the assessors.

10. And all places, constablewicks, divisions, and allotments, shall be assessed in such county, hundred, rape, wapentake, constablewick, division, place, or allotment, as they have been usually assessed in.

Every person, whether he hath a certain place of residence or not, shall be rated for his *personal* estate, at the place where he is resident at the time of the execution of the act: And if he is out of the realm at the time of the assessment, he shall be rated at the place where he was last abiding in the realm.

H. 7 G. Purrett and Weeks. At Taunton assizes, before Price, baron of the exchequer. The plaintiff was an exciseman, and lived in the county of *Devon*, and executed his office in several parishes in that county, and also in a parish that extended into *Somersetshire*. And the commissioners of that county, apprehending they had a concurrent power with the commissioners of *Devon*, to tax him for his salary, on account that he executed his office in their county, they tax him accordingly, and for want of payment distrain. For which, trespass was brought; and ruled, that it well lay; for though he rides about to the publick houses in that county, yet he must be said to keep his office in the town where he lives and hath his books, and there he was only taxable. *Str.* 417.

And every householder shall, on demand of the assessors, give an account of the names and qualities of such persons as shall sojourn and lodge in their houses: on pain of 5 l. to be recovered as the other penalties.

In a city or town corporate, persons having their house in one parish or ward, and goods in another, shall be assessed for the whole where they inhabit.

But

But if a person hath goods in any *other county* than where he is resident, or had his last residence; he may be assessed for such goods in the county where they are.

Members of Parliament shall be assessed for their personal estate, at their mansion houses or places, where they most usually reside during the interval of parliament.

Officers shall pay for the profits of their offices or employments, where the office is executed, and not where the salary is payable: But all other *pensions*, stipends, and annuities (not charged upon lands) shall be assessed where they are payable.

Officers in the receipt of the exchequer, and other public offices, shall, on request of the assessors, deliver *gratis* true lists or accounts of all pensions, annuities, stipends, or other annual payments, and all fees, *salaries*, and other allowances; and if the tax thereupon shall not be afterwards paid, it shall be stopped in such offices, and an account thereof shall be given to the collectors.

And deputies in office shall pay for their principals.

[By the 32 G. 2. c. 33. relating to the duty upon offices, it is provided, that in all future assessments to the land tax, such offices shall not be assessed at a higher rate to the land tax, than they were in the year 1758.]

If a person, having two places of residence or otherwise, shall be *doubly charged* for any personal estate, office, or otherwise; then on certificate of two commissioners for the place of his last personal residence, under hand and seal, of the sum charged upon him there, and on oath made of such certificate before a justice of the place where the certificate shall be made, the person so doubly charged shall be discharged elsewhere.

If any person who ought to be taxed for his personal estate, shall, by changing his place of residence, or by any other fraud or covin escape from the taxation, and the same be proved before two commissioners or one justice where such person resideth, within one year after such tax made; he shall pay treble, to be levied on his lands and goods, on certificate thereof made into the exchequer by such justice or commissioners.

Every person shall be assessed for *lands*, where they lie, and not elsewhere.

And such tax shall be paid by the tenant, who shall deduct it out of his rent: and if any difference shall arise between landlord and tenant, the commissioners, or two of them, shall settle the same.

But contracts between landlord and tenant, or other persons, about paying taxes shall not be avoided thereby.

11. The

Foreign ministers.

11. The tax on foreign ministers houses shall be paid by the landlord.

Papists and non-jurors.

12. Every papist, or reputed papist, being 18 years of age, and upwards, who shall not have taken the oaths of allegiance and supremacy, 1 W. c. 8. shall pay double; unless he take the said oaths, before two commissioners in ten days after the first meeting.

Also every person (whether papist or not) being 18 years old and upwards, and not having taken the said oaths, and upon summons under hand and seal of two commissioners, refusing to take them, or neglecting to appear, shall pay double in like manner.

But quakers refusing to take the oaths, shall not pay double, if they shall make and subscribe the declaration of fidelity in the act of 1 W. c. 18.

Appointing a time to bring in their assessments.

13. And at and after the charge given, the commissioners shall take care, that warrants be issued forth, and directed to two at least of the most able and sufficient inhabitants, appointing and requiring them to be assessors (B); and shall also therein appoint a day and place for the said assessors to appear before them, and to bring in their assessments in writing.

III. The third meeting: Signing the assessment, with warrant to collect.

Penalty on the assessor not appearing.

1. The assessor, after he is appointed, neglecting or refusing to serve, or not appearing at such third meeting, without lawful excuse to be proved on oath of two witnesses, or not performing his duty, shall forfeit to the king any sum not exceeding 40 l. to be levied as the rates, and charged to the receiver general.

Duplicates to be delivered in.

2. At such third meeting, the assessors shall deliver two duplicates of the assessment in writing, signed by them, to the commissioners.

Collectors names to be returned.

3. And shall then also return the names of two or more able and sufficient persons, living within the places where they shall be chargeable respectively, to be collectors; for whom the parish or place shall be answerable.

Signing the duplicates.

4. Then three or more commissioners shall sign and seal two duplicates of the assessments, and deliver one of them to the collectors (whom they shall nominate and appoint) with warrant to the said collector to collect the same. (C)

Appointing the appeal day.

5. And they shall at the same time give notice to the collectors, at what time and place appeals may be heard and

and determined: which shall be at least 30 days from the time of signing and sealing and delivering the duplicate to the collectors.

IV. Fourth meeting: The appeal.

1. Every collector shall, within ten days after the receipt of the duplicates, cause publick notice to be given in every parish church or chapel within his district, immediately after divine service on the lord's day (if any such divine service shall be performed therein within that time) of the time and place so appointed by the commissioners for hearing and determining appeals: And shall also, on the same day, cause the like notices to be fixed in writing on the door of such church or chapel.

Notice of the appeal day to be given in the church.

2. And the collector shall permit the duplicates to be inspected, at all seasonable times of the day without fee.

Collector shall suffer the duplicates to be inspected.

3. Every person intending to appeal, shall give notice thereof in writing to one or more assessors, that they may attend, if they think fit, to justify the assessment.

Appellant to give notice in writing.

4. And in case of any controversy in apportioning the assessments, which concerns any commissioner, such commissioner concerned therein in his own right, or in right of any other for whom he shall act as steward, agent, attorney, or solicitor, shall have no voice, but shall withdraw until it be determined; on pain of any sum not exceeding 20l. to be levied and paid as the other fines.

Commissioner interested to withdraw.

5. And where it appears by proof upon oath, that lands are overcharged by the pound rate, the commissioners at the appeal may make abatement, and cause the sum abated to be reassessed upon the whole hundred, lathe, wapentake, or other division where the overcharges happen, although the pound rate of 4s. in the pound be thereby exceeded; or upon any person therein undercharged; so that the whole sum charged on such division be fully answered.

Relief in case of overcharge.

6. And appeals once heard and determined on the appeal day, shall be final, without any farther appeal upon any pretence whatsoever; and without further trouble or suit in law, either in the king's bench or any other court.

Appeal determined, final.

V. Collecting.

1. The collectors shall make demand of the parties themselves if they can be found, or else at the place of their last abode, or upon the premises charged.

Demand.

2. And

Distress.

2. And if any person shall refuse or neglect to pay to the collector on demand, he may levy the same by distress and sale of the goods of the person so neglecting or refusing :

And where any refusal, neglect, or resistance shall be made, he may (calling the constable to his assistance) break open in the day time any house, and by warrant of two commissioners any chest, trunk, box, or other thing, where any such goods are :

Or he may distrain upon the messuages, lands, tenements, and premises ; and the distress so taken, may keep for four days, at the charges of the owner ; and if not paid in four days, then the distress shall be appraised by two inhabitants or other sufficient persons, and sold by the collector, returning the overplus immediately (if any be) over and above the tax, and charge of taking and keeping the distress.

And if any difference shall arise upon taking the distress, the same shall be determined and ended by two commissioners.

In the case of the *India Company* and *Skinner*, T. 7 W. The defendant pleaded the general issue ; and upon evidence it was objected, that the warrant was to break open in case of opposition ; and this warrant was granted before any default ; which ought not to be, no more than a warrant to distrain for poor rates before demand made ; for the first ought to be only a confirmation of the assessment, and afterwards upon refusal a new warrant is to be made for distress. And *Holt Ch. J.* said, that strictly it was so ; but the practice having been, in this case of taxes, to grant such a conditional warrant to distrain, *communis error facit jus*. Cases of S. 250.

However it is safer not to leave the non-feasance of the party to the judgment of the officers ; but first to issue warrants empowering them to collect, as the act directeth ; and then on proof of their refusal, after summoning the party, grant a warrant to distrain.

Commitment for want of distress.

3. If any person shall refuse or neglect to pay for ten days after demand, or shall convey his goods so that distress cannot be made, he shall be committed (unless he is a peer) by warrant of two commissioners to the common gaol, until payment of the money assessed, and of the charges for bringing in the same.

Levying arrears.

4. Arrears may be levied by the present commissioners, in the same manner as the present tax.

And where lands or houses are unoccupied, and no distress can be found thereon, the collectors for the time being may distrain at any time after; and shall distribute the money to those who contributed to make it up.

5. Where woodlands are assessed, and no distress can be had, the collector or constable by warrant of two commissioners, at seasonable times of the year, may cut and sell wood (except timber trees) to pay the tax. Tax on woodlands how to be levied.

6. If the tax upon any tithes, tolls, profits of markets, fairs, or fisheries, or any other annual profits, not distrainable, shall not be paid in six days after demand, the collector, constable, or other officer, by warrant of two commissioners, may seize and sell so much thereof, wheresoever found, as shall be sufficient to pay the tax and charges occasioned by non-payment. Tax on tithes, tolls and other annual profits, how to be levied.

VI. Collector paying to the receiver general.

1. The collector shall pay the money received, to the receiver general or his deputy, quarterly; on or before Collector to pay to the receiver. June 24. Sept. 29. Dec. 25. and March 25. at such time and place as two commissioners shall appoint; so as the whole sums due be answered by the respective quarterly pay days; and so as the collectors shall not be obliged to travel above ten miles from his usual place of abode.

2. And if the receiver general shall wilfully neglect to attend at the time and place appointed, he shall forfeit 100 l. half to the king, and half to him who shall sue. Receiver neglecting to attend.

3. The receiver general, or his deputy, shall give a receipt *gratis*. Receiver to give receipts.

4. And at every time and place appointed by the commissioners for the collectors to pay the money to the receiver general, he shall deliver a list of the money received by him, to such person as two or more commissioners shall under their hands appoint; on pain of forfeiting a sum not exceeding 20 l. to be paid into the exchequer, as the fines on assessors and collectors. Receiver to deliver lists of money received.

5. And the collectors shall have 3 d. in the pound, for collecting and giving receipts, which they may detain out of the last payment. Collector to have 3 d. a pound.

6. If the collector shall keep in his hands any part of the money by him collected, longer than the time limited, or shall pay any part of it to any other person than to the receiver general, or his deputy, he shall forfeit 40 l. Collector making default.

And if any collector shall refuse or neglect to pay any sum by him received, or shall detain in his hands any money

And

ney by him received, and not pay the same as the act directs, two commissioners may imprison him, or may seize his estate as well freehold as copyhold, and all other estate both real and personal, to him belonging, or which shall come to his heirs, executors, or administrators. Which said commissioners may appoint a general meeting of the commissioners, and shall give publick notice thereof at least six days before: And the commissioners at such general meeting may sell such estates, or any part thereof, for payment.

And the commissioners at any general meeting may summon collectors, who have fraudulently converted land tax money to their own use, and cause them to pay the same, to make up the deficiency if there is any in that place; and if there is no deficiency, then to discharge so much of the proportion charged on such place, as that money doth amount to: And if such collector shall neglect or refuse so to pay, the commissioners may imprison him, and seize and sell his estate for payment.

And persons distraining upon collectors, may keep in their hands so much charges for making and keeping, or otherwise relating to the distress, as two commissioners, who ordered the distress, shall judge reasonable.

Receiver to certify defaults.

7. And in case of failure in payment, the receiver general shall certify the same into the exchequer; and the place or persons neglecting shall be liable to process.

Deficiency to be reassessed.

8. If the full proportion upon any division shall not be fully assessed, levied, and paid; or if any share thereof shall be assessed upon any person not able to pay, or upon any empty or void house or land, where it cannot be collected or levied; or if through wilfulness, neglect, mistake, or accident, the assessment shall not be paid to the receiver general or his deputy; the same shall be reassessed upon such division.

Receiver falsely returning arrears.

9. If the receiver general shall return any persons in arrear who have paid, he shall forfeit treble damages to the party, and double the sum unjustly certified, to the king.

And no receiver shall return any place in arrear, after three years; but the same shall be a debt on him and his securities.

VII. Receiver paying into the exchequer.

Receiver robbed.

1. No receiver general, or any of his agents, shall maintain an action against the hundred, on account of being

being robbed in carrying the money ; unless they be together in company, and in number three at least.

2. And the receiver general, within 20 days after receipt, shall pay the money into the exchequer. Paying into the exchequer.

Which if he shall pay otherwise than into the exchequer, or not within the time limited, he shall forfeit 500l. to him who shall sue.

VIII. Duplicates to be transmitted. (D)

1. The commissioners on or before Aug. 8. or in 20 days after (all appeals being first determined) shall cause to be delivered to the receiver general or his deputy, a schedule or duplicate in parchment under their hands and seals, containing the whole sum assessed upon each parish or place ; and shall transmit a like schedule or duplicate into the king's remembrancer's office in the exchequer ; for which the remembrancer, or his deputy, shall give a receipt *gratis*, on pain of 10l. Duplicates to be transmitted to the receiver general, and into the exchequer.

And in the schedules to be transmitted into the king's remembrancer's office, the commissioners shall distinguish and set down the gross sum charged in any division for double taxes, that it may be known how much the double taxes amount to in such division.

2. And by the 18 G. 2. c. 18. which requires that no person shall vote in the election of a knight of a shire for any lands which have not been assessed to the land tax for 12 kalendar months next before, it is enacted, That the commissioners or 3 of them shall sign and seal a duplicate of the copies of the assessments to be delivered to them by the assessors, after all appeals determined, and cause the same to be delivered to the clerk of the peace, to be kept amongst the records, and inspected by any person without fee. To the clerk of the peace.

3. All which being done, the commissioners clerks, for their trouble in writing the assessments, duplicates, and copies, and all warrants, orders, and instructions relating thereunto, shall have 1d. in the pound, to be paid by the receiver general, according to the warrant of two commissioners. Commissioners clerks to have 1d. 2q. in the pound.

IX. General penalty on officers not doing their duty.

1. If any assessor, collector, or other person, shall wilfully neglect or refuse to perform his duty, or shall be guilty of fraud or abuse, three or more commissioners

Land tax.

may fine him not exceeding 40 l. which shall not be taken off, but by a majority of the commissioners who imposed it. To be levied by warrant of the said commissioners by distress and sale; in default of distress (if not a peer) to be committed to prison by two commissioners till payment.

To be paid to
the receiver ge-
neral.

2. And all fines shall be paid to the receiver general, and paid by him into the exchequer, and shall be inserted in the duplicates to be transmitted into the office of the king's remembrancer.

Other penalties are annexed to the several offences.

X. Indemnity of officers in doing their duty.

Officer liable to
no penalties but
those of the act.

1. No commissioner, assessor, or collector, shall be liable to any other penalties than those inflicted by the act.

Treble costs.

2. And persons sued for any thing done in the execution hereof, may plead the general issue, and have treble costs.

Note; The business of the commissioners of the land tax, in relation to the duties upon the perquisites of offices, is treated of under the title *Offices*; and in relation to the duties upon houses and windows, the same is treated of under the title *Windows*.

A. Precept to the high constable to return assessors.

Westmorland. { To John Bowness, gentleman, high constable of the East Ward within the said county.

WE the commissioners of the land tax, for the said county, whose names are hereunto set, and seals affixed, do hereby require you forthwith upon the receipt hereof, to issue out your warrants to all the petty constables within your said ward, in the form or to the effect here under following; that is to say,

Westmorland, { To the constable of —
East Ward.

BY virtue of a precept from the commissioners of the land tax for the said county to me directed, you are hereby required

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required forthwith to give notice to the last collectors of the said duty within your constableness, that they and every of them do personally appear before the said commissioners at _____ in _____ in the said county, on _____ the _____ day of _____ at the hour of _____ in the forenoon of the same day, in order to be appointed assessors of the said duty for this present year; and at the same time to receive their charge, how and in what manner to make their assessments, and otherwise how to proceed in the execution of their said office. And be you then there, to certify what you shall have done in the execution hereof. Herein fail you not. Given under my hand the _____ day of _____ in the year of our lord _____

John Bowness, high constable.

And this you the said high constable are in no wise to omit, on the peril that shall ensue thereof. Given under our hands and seals the _____ day of _____ in the year of our lord _____

B. Appointment of assessors of the land tax, with their charge.

Westmorland. **B**Y virtue of an act for granting an aid to his majesty by a land tax, at four shillings in the pound, for the service of this present year, We the commissioners of the said duty for the county aforesaid do hereby nominate and appoint _____ to be assessors of the said duty, within the township of _____ in the county aforesaid. And we do hereby require you the said assessors, to make your assessment for the same, according to the proportions of the last assessment for the said duty within your said township. And of your said assessment you are to make out two duplicates in writing, and sign the same with your names; and the same, together with the names of two or more able and sufficient inhabitants to be collectors, you are to deliver unto us at _____ in _____ in the county aforesaid, on _____ the _____ day of _____ at the hour of _____ in the forenoon of the same day. And you are to give notice to the said persons to be by you returned for collectors, that they also do appear at the same time and place, to receive their appointment and charge. Given under our hands and seals, the _____ day of _____ in the year of our lord _____

C. Appointment and charge of the collectors of the land tax, with warrant to collect.

Westmorland. **W**E the commissioners of the land tax for the said county, whose names are hereunto set, and seals affixed, do hereby nominate and appoint _____ to

Land tax.

— to be collectors of the land tax for the township or — in the said county for this present year; and do hereby empower them to demand, collect, and receive the same. And you the said collectors are hereby required, within ten days after your receipt hereof, to cause public notice to be given in the church or chapel immediately after divine service on the lord's day, and to cause the like notice in writing to be affixed on the door of such church or chapel, that all appeals against the assessment for the same, will be finally heard and determined by the said commissioners, at — in — in the said county, on the — day of — now next ensuing. And if after the time of such determination, any person shall refuse or neglect to pay the same upon demand, you are hereby required forthwith to give notice unto us thereof, that such further proceedings may be had therein, as to law doth appertain. And the same, when collected, you are hereby required to pay unto the receiver general or his deputy, at the times and places hereafter following; that is to say, — deducting out of the last payment thereof 3d. for every pound by you collected, for your trouble in collecting and giving receipts. Given under our hands and seals the — day of — in the year of our lord —

D. Form of the duplicates to be transmitted to the receiver general, and into the exchequer.

Westmorland. **A** SCHEDULE, containing the whole sum assessed upon each parish or place, within the East Ward of the said county, for and towards an aid granted to his majesty by a land tax to be raised in Great Britain, for the service of the year one thousand seven hundred and sixty-five, and also the christian names and surnames of the respective assessors and collectors; made by us whose names are hereunto set and seals affixed, commissioners of the land tax for the said county, this — day of — in the year aforesaid.

Orton ————— L. s. d.
32 17 4

Assessors { A. B.
 { C. D.
Collectors { E. F.
 { G. H.

Raisbeck ————— 34 1 4

Assessors { I. K.
 { L. M.
Collectors { N. O.
 { P. Q.

(and so on.)

Larceny.

Larceny.

LARCENY comes from *latrocinium*, *latrocin*; and by contraction, or rather abuse, *larceny*. 3 Inst. 107.

- I. Of grand larceny in general.
- II. Of petit larceny.
- III. Larceny from the person.
- IV. Larceny from the house.
- V. Larceny in a booth or tent.
- VI. Larceny on a navigable river.
- VII. Other larcenies.
- VIII. Receiving stolen goods.
- IX. Offering goods suspected to be stolen, to be pawned or sold.
- X. Advertising or receiving a reward for helping to stolen goods.
- XI. Charges of prosecution and conviction how to be paid.

I. Of grand larceny in general.

Grand larceny is a felonious and fraudulent taking, and carrying away, by any person, of the mere personal goods of another, above the value of 12 d. 1 Haw. 89.

Felonious and fraudulent] Felony is always accompanied with an evil intention, and therefore shall not be imputed to a mere mistake or misanimadversion; as where persons break open a door, in order to execute a warrant, which will not justify such a proceeding; for in such case there is no felonious intention. 1 Haw. 65.

For it is the mind that makes the taking of another's goods to be felony, or a bare trespass only; but because the variety of circumstances is so great, and the complications thereof so mingled, that it is impossible to prescribe all the circumstances evidencing a felonious intent, or the contrary; the same must be left to the due and attentive consideration of the judge and jury; wherein the best rule is, in doubtful matters rather to incline to acquittal than conviction. Only in general it may be observed, that the ordinary discovery of a felonious intent is, if the party doth

it secretly, or being charged with the goods denies it.
1 *H. H.* 509.

But nevertheless, doing it openly and avowedly doth not excuse from felony. So where a man came to *Smithfield* market to sell a horse, and a jockey coming thither to buy a horse, the owner delivered his horse to the jockey to ride up and down the market to try his paces, but instead of that, the jockey rode away with the horse, this was adjudged felony. *Kel.* 82.

So where a person came into a sempstress's shop, and cheapened goods, and ran away with the goods out of the shop, openly, in her sight, this was adjudged to be felony. *Raym.* 276.

So where a man comes into a house, by colour of a writ of execution, and carries away the goods; or sues out a replevin to get another man's horse, and then runs away with him; this is felony under colour of law, 2 *Ventr.* 94. *Kel.* 83.

Taking] All felony includes trespass; and every indictment must have the words *feloniously took*, as well as *carried away*: from whence it follows, that if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony in carrying them away. 1 *Haw.* 89.

And from this ground it hath been holden, that one who finds the goods which I have lost, and converts them to his own use, with intent to steal them, is no felon; and *a fortiori* therefore it must follow, that one who has the actual possession of my goods by my delivery, for a special purpose, as a carrier who receives them, in order to carry them to a certain place; or a taylor who has them in order to make me a suit of cloaths; or a friend who is intrusted with them to keep for my use, cannot be said to steal them, by imbezilling of them afterwards. 1 *Haw.* 89.

But yet it hath been resolved, that if a carrier open a pack, and take out part of the goods; or a weaver who has received silk to work, or a miller who has corn to grind, take out part thereof, with intent to steal it, it is felony. 1 *Haw.* 90.

So where a man's goods are in such a place, where ordinarily they are or may be lawfully placed, and a person takes them, with intent to steal them, it is felony; and the pretence of finding must not excuse. 1 *H. H.* 506.

So if a man's horse be going upon a common where he has a right to put him, and another take the horse with intent to steal him, it is no finding, but a felony. 1 *H. H.* 506.

So also, if the horse stray into a neighbour's ground or common, it is felony in him that so takes him. But if the owner of the ground takes him doing damage, or the lord seize him as a stray, though perchance he hath no title so to do, yet here is not a felonious intention, and therefore cannot be felony. *1 H. H. 506.*

If one man's sheep stray into another man's flock, and that other person drives it along with his flock, or by bare mistake shears it, this taking is not a felony; but if he knew it to be another's, and marks it with his mark, this is an evidence of felony. *1 H. H. 507.*

Lord Hale says, If one man take another man's hay or corn, and mingles it with his own heap or stock; or take another man's cloth, and embroider it with silk or gold; such other person may retake the whole heap of corn, or cock of hay, or garment and embroidery also; and this retaking is no felony, nor so much as a trespass. *1 H. H. 513.*

It seems generally agreed, that one who has the bare charge, or the special use of goods, but not the possession of them; as a shepherd who looks after my sheep, or a butler who takes care of my plate, or a servant who keeps a key to my chamber, or a guest who has a piece of plate set before him in an inn may be guilty of felony in fraudulently taking away the same. *1 Haw. 90.*

By the *21 H. 8. c. 7.* Servants imbezilling their master's goods to the value of 40s. or above (although this taking be no trespass) shall be punished as felons. But this shall not extend to any apprentice, nor to any person within 18 years of age.—And by the *12 An. c. 7.* If it is taken out of an house, or outhouse, it is felony without benefit of clergy.

Also by the *3 W. c. 9.* If any person shall take away with intent to steal, or imbezil, any furniture out of his lodging, he shall be guilty of felony.

And carrying away] To make it come within this description, it seemeth that any the least removing of the thing taken, from the place where it was before, is sufficient for this purpose, though it be not quite carried off: And upon this ground, the guest, who having taken off the sheets from his bed, with an intent to steal them, carried them into the hall, and was apprehended before he could get out of the house, was adjudged guilty of larceny: So also was he, who having taken an horse in a close, with an intent to steal him, was apprehended before he could get him out of the close. *1 Haw. 93.*

Larceny.

By any person] A wife may be guilty thereof, by stealing the goods of a stranger; but not by stealing the goods of her husband. 1 *Haw.* 93.

It is said by Mr. *Dalton* and others, that it is no felony for one reduced to extreme necessity, to take so much of another's victuals, as will save him from starving; but lord *Hale* says, that this rule by the law of *England* is false; and therefore that if a person, being under necessity for want of victuals or cloaths, steals another man's goods, it is felony. 1 *H. H.* 54.

If one stealeth another's man's goods, and afterwards another stealeth the same from him; the owner may charge the first or second felon at his choice. *Dalt.* c. 162.

An alien, whose sovereign is in amity with the crown of *England*, residing here, and receiving the protection of the law, oweth a local allegiance to the crown during the time of his residence. And if, during that time, he committeth an offence, he shall be liable to be punished for the same, even as a natural born subject. For his person and personal estate are as much under the protection of the law, as the natural born subjects; and if he is injured in either, he hath the same remedy at law for such injury. *Fost.* 185.

So also, an alien whose sovereign is at enmity with us, living here under the king's protection, committing offences, may be proceeded against in like manner; for he oweth a temporary local allegiance, founded on that share of protection he receiveth. *id.*

So also a prisoner of war, although he is not properly subject to the municipal laws of this realm, yet if he commits any offence against the law of nations, or the light of nature and the fundamental laws of all society, he is liable to answer in the ordinary course of justice, as other persons offending in like manner are. As in the case of *Peter Molieres*, a French prisoner, who was indicted at the gaol delivery for the city of *Bristol* in *August* 1758, before Sir *Michael Foster*, for privately stealing in the shop of a goldsmith and jeweller, a diamond ring valued at 20*l.* Sir *Michael* says, he thought it highly improper to proceed capitally upon a local statute, against a prisoner of war; and therefore advised the jury to acquit him of the circumstance of stealing in the shop as by the statute, and to find him guilty of simple larceny to the value laid in the indictment. Accordingly, he was burnt in the hand, and sent to the prison appointed for French prisoners. *id.* 188.

Of the mere personal goods.] Mere; for if the personal goods savour any thing of the realty, it cannot be larceny. And therefore they ought to be no way annexed to the freehold; therefore it is no larceny, but a bare trespass, to steal corn or grass growing, or apples on a tree; but it is larceny to take them being severed from the freehold, as wood cut, grass in cocks, stones digged out of the quarry; and this, whether they are severed by the owner, or even by the thief himself, if he sever them at one time, and then come again at another time and take them. 1 *Haw.* 93. 1 *H. H.* 510.

But by the 4 *G. 2. c. 32.* Every person who shall steal, rip, cut, or break, with intent to steal, any lead, iron bar, iron gate, iron palisadoe, or iron rail, fixed to any building, or in any garden, orchard, court yard, fence, or out-let belonging to any building; he, his aiders, and abettors, and also all who shall knowingly buy or receive the same, shall be guilty of felony, and be transported for seven years.

Also the goods ought to have some worth in themselves, and not to derive their whole value from the relation they bear to some other thing, which cannot be stolen; as paper, or parchment, on which are written assurances concerning lands, or obligations, or covenants, or other securities for a debt, or other *chose* in action. 1 *Haw.* 93.

But by the 8 *H. 6. c. 12.* If any person shall steal any record or process belonging to any of the courts at *Westminster*, by reason whereof any judgment shall be reversed, he shall be guilty of felony.

And by the 2 *G. 2. c. 25.* If any person shall steal, or take by robbery, any exchequer order or tallies, or other orders, intitling any other person to any annuity or share in any parliamentary fund; or any exchequer bills; bank notes; *South Sea* bonds; *East India* bonds; dividend warrants of the bank, *South Sea* company, *East India* company, or any other company; bills of exchange; navy bills or debentures; goldsmiths notes for payment of money; or other bonds or warrants, bills, or promissory notes for payment of money; he shall be guilty of felony, with or without the benefit of clergy, in the same manner as he would have been, if he had stolen or taken by robbery any other goods of like value with the money due thereon: But not to work corruption of blood,

The goods ought also not to be things of a base nature, as dogs, cats, bears, foxes, monkeys, ferrets, and the like; which, howsoever they may be valued by the owner, shall never be so highly regarded by the law, that for their sakes
a man

Larceny.

a man shall die: But yet the stealing of an hawk, knowing it to be reclaimed, is felony by the common law and by statute, in respect of that very high value which was formerly set upon that bird. 1 *Haw.* 93.

Of another] It seems agreed, that the taking of goods, whereof no one had a property at the time, cannot be felony; and therefore that he who takes any treasure trove, or a wreck, waif, or stray, before they have been seized by the persons who have a right thereto, is not guilty of felony, but shall be punished by fine. 1 *Haw.* 94.

But yet the taking of these must be, where the party that takes them, really believes them to be such, and colours not a felonious taking under such a pretence; for then every felon would cover his felony under that pretence. 1 *H. H.* 506.

Neither shall he who takes fish in a river or other great water, wherein they are at their natural liberty, be guilty of felony; as he may be, who takes them out of a trunk or pond. 1 *Haw.* 94.

Upon the like ground it seems clear, that a man cannot commit felony, by taking hares or conies in a warren, or old pigeons being out of the house; but it is agreed, that one may commit larceny, in taking such or any other creatures *feræ naturæ*, if they be fit for food, and reduced to tameness, and known by him to be so. 1 *Haw.* 94.

Also it is said, that there may be felony in taking goods, the owner whereof is unknown; in which case, the king shall have the goods, and the offender shall be indicted for taking the goods of a person unknown; and it seems, that in some cases the law will rather feign a property, where in strictness there is none, than suffer an offender to escape. 1 *Haw.* 94.

He who steals goods belonging to a parish church, may be indicted for stealing the goods of the parishioners. 1 *Haw.* 94.

And it hath been adjudged, that he who takes off a shroud from a dead corps, may be indicted as having stolen it from him, who was the owner thereof when it was put on; for a dead man can have no property. 1 *Haw.* 94.

Above the value of 12 d.] The learned editor of *Hale's* history of the pleas of the crown observes, that in former times, though the punishment of theft was capital, yet the criminal was permitted to redeem his life by a pecuniary ransom; but in the 9 *H.* 1. it was enacted, that whoever was convicted of theft should be hanged, and the liberty of redemption was entirely taken away; which law continues

to this day. But considering the alteration in the value of money, the severity of it is much greater now than it was then; for 12d. would then purchase as much as 40s. will now; and yet a theft above the value of 12d. is still liable to the same punishment. Upon which Sir *H. Spelman* justly observes, that while all things else have risen in their value, and grown dearer, the life of man is become much cheaper; and from hence takes occasion to wish, that the ancient tenderness of life were again restored. 1 *H. H.* 12.

And lord *Coke*, observing that when the statute of the 3 *Ed. 1.* was made, which makes stealing of goods above the value of 12d. to be grand larceny, the ounce of silver was at the value of 20d. and now it is at the value of 5s. and above, draws this conclusion, that the thing stolen ought to be reasonably valued, that is, having respect to the great alteration in the value of money. 2 *Inst.* 189, 190. For 20s. were then a real pound weight; which name we still retain, although the weight is much diminished.

If two persons or more, together, steal goods above the value of 12d. every one of them is guilty of grand larceny; for each person is as much an offender as if he had been alone. 1 *Haw.* 95.

Also it seems the current opinion of all the old books, that if one at several times steal several parcels of goods, each under the value of 12d. but amounting in the whole to more, from the same person, and be found guilty thereof on the same indictment, he shall have judgment of death as for grand larceny; but this severity is seldom practised. 1 *Haw.* 95.

II. Of petit larceny.

Petit larceny agrees with grand larceny in the several particulars abovementioned, except only the value of the goods (and except as hereafter followeth); so that wherever an offence would amount to grand larceny, if the thing stolen were above the value of 12d. it is petit larceny, if it be but of that value or under. 1 *Haw.* 95.

And if one be indicted for stealing goods to the value of 10s. and the jury find specially, as they may, that he is guilty, but that the goods are worth but 10d. he shall not have judgment of death, but only as for petit larceny. 1 *Haw.* 95.

In petit larceny there can be no accessories, neither before nor after. 1 *H. H.* 530.

By the 3 *Ed. 1. c. 15.* Persons indicted of petit larceny, if they were not guilty of some other larceny aforetime, are bailable.

bailable by justices of the peace. And it seems to be agreed, that there is no necessity, that such persons be of good reputation: but yet if the crime be open and manifest, it seems that they ought not to be bailed; but if there be any colour of probability for their innocence, it seems most agreeable to the intention of the statute to bail them. 2

Haw. 101.

For a justice of the peace, before whom an offender shall be brought for petit larceny out of sessions, may not punish the said offender by his discretion, and so let him go; but must have him committed or bailed, to the intent he may come to his trial, as in cases of other felonies: And if upon his trial, the jury shall find the goods stolen to exceed 12 d. in value, the offender shall have judgment to die for the fault. *Dalt. 2. 134.*

It seemeth that all petit larceny is felony, and consequently requires the word *feloniously* in an indictment for it; yet it is certain, that it is not punishable with the loss of life, or lands, but only with the forfeiture of goods, and whipping, transportation, or other corporal punishment. 1

Haw. 95.

If a man appear to be obstinately mute, on an arraignment of petit larceny, he shall not have judgment of *pain fort et dure*, as in cases of grand larceny; but he shall have the like judgment as if he had confessed the indictment. 2 *Haw. 329.*

III. Larceny from the person.

If the goods are taken from a man's person, the offence receives a farther degree of guilt; and if it is attended with putting him in fear, it is called *robbery*; for which see that title.

If it is without putting him in fear, then it is called *barely larceny from the person*. 1 *Haw. 95.*

If it is done privily without his knowledge, by picking of pockets, or otherwise, it is excluded from the benefit of clergy by the 8 *El. c. 4.* (That is, if the thing stolen be above the value of 12 d. 2 *H. H. 366.*) But this statute extendeth not to accessaries, either before or after. 2 *Haw. 350.*

If it is done openly and avowedly before his face, it is within the benefit of clergy, (1 *Haw. 97.*) except where it is committed in a dwelling house, or outhouse thereunto belonging, to the value of 40 s. from which the benefit of clergy is taken away, by the 12 *An. st. 1. c. 7.* hereafter following.

IV. Larceny

IV. Larceny from the house.

This must be understood where the offence falls short of burglary.

1. By the 3 *W. c. 9.* Every person that shall feloniously take away any goods, being in any dwelling house, any person being therein, and put in fear; or shall rob any dwelling house in the day time, any person being therein; he, his comforters and abettors, shall be guilty of felony without benefit of clergy.

Robbing a dwelling house, some person being therein.

2. And by the 39 *El. c. 15.* Every person who shall be convicted of the feloniously taking away in the day time any money or goods of the value of 5s. in any dwelling house, or outhouse thereunto belonging, and used to and with the same, altho' no person be therein, shall be guilty of felony without benefit of clergy.

Robbing an house to the value of 5s. no person being therein.

This requires an actual breaking, and not entring by the doors being open. *1 H. H. 548.*

3. And by the 12 *Ann. st. 1. c. 7.* Every person that shall feloniously steal any money, goods, or merchandizes, to the value of 40s. being in any dwelling house, or outhouse thereunto belonging, altho' it be not broken open, nor any person be therein, shall be guilty of felony without benefit of clergy.

Stealing out of an house to the value of 40s. no person being therein, and the same not broken open.

4. And by the 1 *Ed. 6. c. 12. s. 10.* Every person who shall be convicted of breaking any house in the day-time, any person being therein, and put in fear, shall be guilty of felony without benefit of clergy.

Breaking a house in the day time, any person being therein, and put in fear.

And this altho' nothing be actually taken: but it requires not only an actual breaking, and putting in fear, but also an entry with intent to commit felony, and so to be laid in the indictment. *1 H. H. 548.*

5. By the 10 & 11 *W. c. 23.* Every person that shall by night or by day, in any shop, warehouse, coach-house or stable, privately and feloniously steal any goods, wares, or merchandizes, to the value of 5s. altho' it be not broken open, nor any person be therein, shall be guilty of felony without benefit of clergy.

Shoplifting, to the value of 5s.

Warehouse.] In the case of *John Howard*, at the *Old Bayly*, July 3, 1751. He was indicted on this statute, for privately stealing goods, the property of *Messieurs Fludyer and company*, in the warehouse of *John Day*: There was another count in the indictment, charging that the prisoner stole the goods of *John Day* in his warehouse. The case

Larceny.

case upon evidence appeared to be, that *John Day* kept a common warehouse by the water side, where merchants did usually lodge goods intended for exportation, till they could have an opportunity of putting them on board. The goods in the indictment were sent by *Fludyer* and company to this warehouse, in order to be put on board a vessel for exportation, and were stolen by the prisoner in this warehouse. The court was of opinion, that this is not a case within the statute. For by the word *warehouse* in the statute is meant, not a mere repository for goods, but such places where merchants and other traders keep their goods for sale, in the nature of shops, and whither customers go to view them. And though the goods in this case might with propriety enough be charged to be the goods of *John Day*, since he had the charge and possession of them, which made him answerable to his principals for them; yet still the same objection recurreth, his warehouse was not a place for sale, but merely safe custody. Accordingly the larceny being fully proved, the prisoner was by the direction of the court found guilty of larceny, to the value laid in the indictment, and acquitted of stealing privately in the warehouse. — It has been generally held, that the meaning of this act, with regard to *shoplifting*, is, that the goods must be such as are usually exposed to sale in the *shop*, and not any other valuable thing which may happen to be put there. And it seemeth that the same equitable construction should take place with regard to *warehouses*. The goods should be such as are usually exposed to sale in such places. And tho' *coachhouses* and *stables*, which are likewise named in the act, are not places for sale, yet still in the construction of so penal a law, it will not be amiss to carry the same equity as far as may be with regard to them. The goods should be such as are usually lodged in those places. *Fost. 77.*

Privately] If it shall appear on the evidence, as it often doth, that those places were *broke open* at the time of the larceny, the case (as it seemeth) will not come within the act. For the words are, — if any person shall *privately* steal, — which seemeth to exclude all cases, where any degree of force is used to come at the goods. *id. 79.*

Any goods, wares, or merchandizes] In which words *money* is not included. For altho' the word *goods* may in a large sense take in money, and often doth, yet being connected with *wares and merchandizes*, the safer construction of

of so penal a statute will be, to confine it to goods of like kind, goods exposed to sale. *id.*

In like manner, it was ruled, upon the same principle at *Maidstone* Lent assizes 1752, in the case of *George Grimes*, indicted on the statute, 24 G. 2. c. 45. for stealing a considerable sum of money out of a ship in port: Tho' great part of it consisted in *Portugal* money, not made current by proclamation, but commonly current. *id.*

6. Every person who shall apprehend any one guilty of breaking open houses in a felonious manner; or of privately and feloniously stealing goods, wares, or merchandizes, of the value of 5s. in any shop, warehouse, coach-house, or stable, tho' they be not broken open, and altho' no person be therein to be put in fear, and shall prosecute him to conviction, shall have a certificate without fee, under the hand of the judge, certifying such conviction, and within what parish or place the felony was committed, and also that such felon was discovered and taken, or discovered or taken, by the person so discovering or apprehending; and if any dispute arise between several persons so discovering or apprehending, the judge shall appoint the certificate into so many shares to be divided among the persons concerned as to him shall seem just and reasonable:

Reward for convicting an offender: Exemption from parish offices.

And if any person shall happen to be slain by any such housebreaker, or other felon as aforesaid, in endeavouring to apprehend him, the executors or administrators of such person slain, shall have the like certificate:

Which certificate shall be enrolled by the clerk of the peace of the county in which it shall be granted, for which he shall have 1s.

And the said certificate may be once assigned over, and no more:

And the original proprietor, or the assignee of the same, shall by virtue thereof be discharged from all manner of parish and ward offices, within the parish or ward where the felony was committed.

But the certificate shall not be assignable, after it has been once made use of to exempt any person from such office. 10 & 11 W. c. 23.

From all manner of parish and ward offices] E. 29 G. 2. *K. and Davis*. Motion to quash a conviction and the affirmance of it on appeal, removed into the king's bench by certiorari; upon this case:—The defendant, being assignee of a certificate under this act, was appointed by the trustees under an act of the 22 G. 2. to be collector of the parish

parish rates for repair of the roads within the parish of St. Leonard's Shoreditch; and refusing to take the office upon him, insisting that he was exempted by the benefit of his certificate, he was convicted before a justice; and this conviction being affirmed upon appeal to the sessions, it was now moved to quash these proceedings as illegal. After argument on shewing cause: — By *Ryder Ch. J.* The question is, Whether the defendant has a right to be exempted from this office by virtue of his certificate? The act exempts the party, and his assignee, from all parish and ward offices. Here are two questions; first, whether this is a parish office; secondly, whether it is within this act; and tho' the latter may seem to be a consequence of the former, yet it may be necessary to consider, whether this is the old office of surveyor, or a new office. It is not necessary for a parish officer to be chosen by the parishioners. A parish office must be exercised about parish business; and the officer must be a parishioner: both which ingredients are here. It may be a question of nicety, whether this act extends to new offices; tho' I give no opinion as to this point. The office is not co-extensive with that of surveyor; but yet it seems part of that old office. It cannot be presumed, that the 22 G. 2. meant to take away any privilege which the party had before. Therefore as I do not think this is a new office, I think the conviction and affirmance thereof ought to be quashed; without giving any opinion, whether the exemption will extend to a new office, which did not exist at the time of the 10 & 11 W.—*Dennison J.* The question is, Whether the collector of the parish rates in the parish, within the 22 G. 2. is a parish officer within the benefit of the certificate under the 10 & 11 W. I think the act of 10 & 11 W. ought to have a liberal construction. The office of surveyor is partly to be executed by this collector. And it is in fact an old office, divided by an act of parliament, and to be executed by two persons. And the collector is certainly as much a parish officer, as the surveyor appointed under this act of parliament. A covenant to pay taxes, extends to subsequent taxes of the same kind. So a privilege of persons from offices. The act does not confine it to offices in being. It was intended as a reward. Therefore the new modelling an old office, shall have the same benefit and construction, as the old office it self would be intitled to. — *Foster J.* This must certainly be taken to be a parish office. For the duty is confined to the parish, and to be executed by an inhabitant.

I do not take it to be a new office; for it is part at least of the old one. I will go a little further, and suppose it an intirely new created office; and yet if a parish office, I should think it within the 10 & 11 W. Clergymen, at common law are exempted from all offices; and therefore would be exempted from new offices. So an attorney's privilege extends to all matters of like nature. So dissenting ministers, being exempted from all offices by the toleration act, are exempt from new offices, as well as old ones. — *Wilmut J.* The words of the act of 10 & 11 W.

are as general as can be. Nothing can more contribute to the publick safety than apprehending felons, which is the object of the act. It is not necessary to give an opinion; but I take it, if this had been a new office, it would have been within the exemption. This office has every badge of a parish office. It must be exercised by a parishioner; within the parish; the rates are to be applied to a parochial purpose; and I think it not necessary that a parish officer should be appointed by the parish, as the constable is a parish officer, tho' not named by the parish. Nothing can be clearer, than that this is part of the old office of surveyor. — Therefore the conviction, and affirmance thereof, were quashed.

7. And moreover, as a further reward, every person ^{40l. reward for} who shall apprehend any person guilty of the felonious ^{convicting.} breaking and entering of any house in the day time, and prosecute him to conviction, shall have a certificate under the hand of the judge, without fee, to be made out and delivered before the end of the assizes, certifying the conviction, and in what parish the said felony was committed, and also that such felon was taken by the person claiming the reward; and if any dispute shall happen to arise between the persons claiming, the judge shall by the said certificate appoint the same to be paid amongst the parties claiming the same, in such shares and proportions as to him shall seem just and reasonable:

And on tender of such certificate to the sheriff, and demand made, he shall pay to the person so intituled the sum of 40l. without fee, within one month after such tender and demand; on pain of forfeiting double, with treble costs. 5 An. c. 31.

8. And if any watchman, or any other person be killed ^{40l. to the exe-} in endeavouring to apprehend any such housebreaker, his ^{cutors of a per-} executors or administrators shall have a certificate delivered ^{son killed.} under the hand and seal of the judge, or of the two next justices, of such person being so killed; which certificate

they shall, upon sufficient proof before them made, give without fee: Whereupon such executor or administrator shall be intitled to receive the like sum of 40l. in like manner. 5 An. c. 31. f. 2.

40l. and a pardon for convicting accomplices.

9. And moreover, if any person being out of prison, shall commit any such housebreaking in the day time as aforesaid, and afterwards discover two or more the like offenders, so as two or more be convicted, he shall have the like reward and allowance of 40l. and also all other advantages which are given to persons who shall apprehend and convict any the like offenders; and shall also have the king's pardon for all burglaries, robberies, and felonies (except murder and treason) by him committed before such discovery made; which pardon shall be likewise a good bar to an appeal. 5 An. c. 31. f. 4.

Sheriff to be repaid out of the treasury.

10. And the sheriff, on producing the certificates, and receipts for the said rewards, may deduct the same on his accounts; and if he have not money in his hands, he shall be repaid out of the treasury, on certificate from the clerk of the pipe. 5 An. c. 31. f. 3.

Or instead of charging the same in his accounts, he may immediately apply to the commissioners of the treasury, who shall forthwith repay the same without fee. 3 G. c. 15. f. 4.

V. Larceny in a booth or tent.

Persons found guilty of robbing any person in any booth or tent, in any fair or market, the owner, his wife, children, or servants being within, whether they be sleeping or waking, shall suffer as felons without benefit of clergy. 5 & 6 Ed. 6. c. 9. f. 5.

VI. Larceny on a navigable river.

By the 24 G. 2. c. 45. All persons who shall feloniously steal any goods or merchandize of the value of 40s. in any ship, barge, lighter, boat or other vessel or craft, upon any navigable river or in any port of entry or discharge, or in any creek belonging thereto, or from off any wharf or key adjacent to any navigable river, port of entry or discharge, or shall be present and assisting therein, shall be guilty of felony without benefit of clergy.

And by the 2 G. 3. c. 28. Persons navigating bum boats on the river *Thames*, for the purpose of selling liquors, sops, tobacco, fruit, greens, gingerbread, or other such

such like ware, except such boats as shall be entred at *Trinity House*; and persons taking in exchange, or by way of barter, or unlawfully receiving any ropes, cordage, tackle, goods, stores, or merchandize of any vessels in the river; or cutting, damaging, and spoiling any cordage, cable, buoys, buoy rope, headstall, or other fast or rope belonging to any ship in the river, with intent to steal the same; shall be punished as in the said act is directed: which act being somewhat long, and only local, it is thought fit to refer to the act it self for a more particular description of the offences, and for the manner of conviction and punishment.

VII. Other larcenies.

There are moreover divers other larcenies, which are not here specified, the same being inserted under the several titles in this book, to which they do more properly belong, That is to say,

Larceny in stealing woollen cloth off the tenters in the night time, is inserted under the title **Woollen manufacture.**

Larceny in stealing linen, fustian, callico, or cotton cloth, yarn, or goods laid to be printed, bleached, or dried, to the value of 10s. under the title **Linen cloth.**

Larceny in stealing cattle or sheep (with a reward of 10 l. for convicting an offender) under the titles **Cattle** and **Sheep.**

Larceny in stealing deer in parks, conies or hares in warrens, or fish in ponds, under title **Game.**

Larceny in stealing hawks or swans, also under title **Game.**

VIII. Receiving stolen goods.

1. By the 3 *W. c. 9.* If any person shall buy or receive any stolen goods, knowing the same to be stolen; he shall be deemed an accessary after the fact, and suffer accordingly. *f. 4.*

2. And by the 5 *An. c. 31.* If any person shall buy or receive any stolen goods, knowing them to be stolen, or shall receive, harbour, or conceal any felons or thieves, knowing them to be so; he shall be deemed accessary to the felony, and, being convicted on the testimony of one witness, shall suffer death as a felon convict. *f. 5.*

3. And by the 4 G. c. 11. Persons convicted of receiving or buying stolen goods, knowing them to be stolen, may be transported for 14 years. *f. 1.*

In the case of *Abraham Evans*, at the sessions at the *Old Baily* in *May 1749*, *John Avery* and *Abraham Evans* were indicted, *Avery* for privately stealing from the person of *Sir Giles Payne*, one silk handkerchief, value 12 d; and *Evans* for feloniously receiving the same, knowing it to be stolen. *Avery* was found guilty to the value of 10 d, and was ordered to be transported for seven years. *Evans* was likewise convicted of receiving the goods knowing them to be stolen; but judgment was respited as to him, upon a doubt whether sentence of transportation for 14 years can be given against him upon the statute of the 4 G. in regard the principal felon is found guilty of petty larceny only. And at a meeting of the judges to consider of this doubt, they were all of opinion, that no judgment can be given against *Evans* on this verdict. For tho' the act is express, that persons convicted of buying or receiving stolen goods, knowing them to be stolen, shall be transported for 14 years, yet still it must mean persons *legally* convicted, persons convicted as accessaries after the fact under the statutes of the 3 W. and 5 An. But this man ought to have been acquitted, the principal felon being convicted of petty larceny only. And indeed the indictment against *Avery* being for petty larceny, *Evans* ought not to have been put upon his trial. For the acts which make receivers of stolen goods knowingly, accessaries to the felony, must be understood to make them accessaries in such cases only, where by law an accessory may be; and there can be no accessory to petty larceny. Accordingly, at the next sessions, *Evans* was discharged. *Foss. 74.*

4. And notwithstanding that regularly the accessory cannot be tried, till the principal be convicted, yet by the 5 An. c. 31. it is enacted, that if the principal felon cannot be taken, so as to be prosecuted and convicted, yet nevertheless the buyer and receiver of stolen goods may be prosecuted as for a misdemeanor, and punished by fine and imprisonment, or other such corporal punishment as the court shall think fit; which shall exempt him from being punished as accessory, if the principal shall be afterwards taken and convicted. *f. 6.*

5. And by the 29 G. 2. c. 30. it is enacted as follows:

Whereas the pernicious practice of stealing lead, iron, copper, brass, bell-metal, and solder, fixed to, or lying or being

being in or upon houses, outhouses, mills, warehouses, workshops, and other buildings, areas, vaults, yards, gardens, orchards, or other places; and also the stealing of such materials from ships, boats, and other vessels, and from off wharfs, keys, and other places, is become a great evil, by reason of the difficulty in apprehending and convicting the thieves, and in discovering the buyers and receivers; it is therefore enacted, that every person who shall buy or receive any of the same, knowing the same to be stolen or unlawfully come by, or shall privately buy or receive any stolen lead, iron, copper, brass, bell-metal, or solder, by suffering any door, window, or shutter to be left open or unfastened, between sun-setting and sun-rising, for that purpose; or shall buy or receive any of the same at any time in any clandestine manner; shall, on conviction by due course of law, altho' the principal felon hath not been convicted, be transported for 14 years. *f. 1.*

And one justice on complaint on oath by any credible person, that there is cause to suspect that stolen lead, iron, copper, brass, bell-metal, or solder, is concealed in any dwelling-house, outhouse, yard, garden, or other place, may by his warrant cause such place to be searched in the day time; and if any of the same, suspected to be stolen, shall be found therein, may cause the same, and the person in whose house or other place the same shall be found, to be brought before two justices: And if such person shall not give an account, to the satisfaction of such justices, how he came by the same, or shall not in some convenient time to be set by the said justices produce the party of whom he bought or received the same, he shall be adjudged guilty of a misdemeanor. *f. 2.*

And every constable within his constablewick, beadle within his district, and watchman whilst he is upon duty, shall apprehend or cause to be apprehended every person who may reasonably be suspected of having, carrying, or conveying, after sun-setting and before sun-rising, any of the said materials, suspected to be stolen or unlawfully come by; and the same, together with such person, as soon as conveniently may be, shall carry before two justices: And if the person so apprehended conveying the same, shall not produce the party from whom he bought or received the same, or some other credible witness to depose upon oath the sale or delivery thereof, or shall not give an account, to the satisfaction of such justices, how he came by the same, he shall be adjudged guilty of a misdemeanor. *f. 3.*

Larceny.

In either of which cases, two justices may cause the said materials to be deposited with the churchwardens or overseers of the poor where the same were found, or in any other convenient place, for any time not exceeding 30 days, and in the mean time may order the said churchwardens or overseers, or one of them, in every parish within the bills of mortality, to insert an advertisement in some publick paper; and elsewhere cause notice to be given by some publick cryer, and by fixing on the church or chapel door notice describing such materials, and where deposited: And if any person can prove his property thereto, upon oath, to the satisfaction of such two justices, they shall order restitution thereof to the owner, after paying reasonable charges of removing, depositing, and giving publick notice of the same. And if at the end of the 30 days, no person shall prove his property thereto, the same shall be sold for the best price that can reasonably be had; and after deducting the charges as aforesaid, half of the money arising from such sale shall be given to the person apprehending, and half to the poor of the parish where the offence shall be committed (if it is known where), or else where the conviction shall be. *f. 4.*

And every person to whom any of the same shall be brought and offered to be sold, pawned, or delivered (there being reasonable cause to suspect that the same was stolen or unlawfully come by) shall apprehend, secure, and carry before a justice (having it in his power so to do) the person so bringing or offering the same, together with the said materials; and such person shall be dealt with, and the said materials shall be deposited and disposed of, as if he had been apprehended by the constable, beadle, or watchman: And if it shall appear upon the oath of any person, notwithstanding he was concerned in stealing the same, if corroborated with other credible circumstances, to the satisfaction of two justices, that there was reasonable cause to suspect that the same was stolen or unlawfully come by, and that the person to whom the same was brought or offered did not (having it in his power so to do) apprehend, secure, and carry before a justice the person who brought or offered the same; then the person to whom the same was brought or offered, shall be adjudged guilty of a misdemeanor. *f. 5.*

And persons for the two former misdemeanors, in having or carrying any of the said goods, shall forfeit for the first offence 40 s. for the second 4 l. and for every subsequent offence 6 l. and for the other misdemeanor, in not carrying

carrying a suspected person before a justice, shall forfeit for the first offence 20 s. for the second 40 s. and for every subsequent offence 4 l. by distress; half to the informer, and half to the overseers for the use of the poor where the offence was committed (if known), or otherwise, where the conviction shall be. And if no sufficient distress shall be found, then to be committed to the common gaol or other prison or house of correction for one month for the first offence, for the second two months, and for every subsequent offence till discharged by order of sessions. *f. 6.*

The conviction to be on parchment, and to be certified to the next sessions, and there filed; in the form or to the effect following, *viz.*

Middlesex, **B**E it remembred, that on the _____ day of _____ to wit. _____ in the year _____ A. O. was convicted before us _____ of the justices of the peace for _____ of a misdemeanor, in having in his possession lead, iron, copper, brass, bell-metal, or solder, suspected to be stolen or unlawfully come by, and not producing the party or parties of whom he bought or received the same, nor giving a satisfactory account how he came by the same [or, in having, carrying, or conveying of lead, iron, copper, brass, bell-metal, or solder, suspected, to be stolen or unlawfully come by, and not producing the party or parties from whom he bought or received the same, nor any credible witness to depose upon oath the sale or delivery thereof, and not giving a satisfactory account how he came by the same; or, of neglecting to apprehend and secure the person who brought and offered to pawn, sell, or deliver lead, iron, copper, brass, bell-metal, or solder, suspected to be stolen or unlawfully come by; as the case shall be:] Given under our hands and seals the day and year aforesaid.

Which conviction shall not be liable to be removed by certiorari, but shall be final to all intents and purposes. *f. 7.*

And if any person, being out of prison, shall commit any felony by stealing any of the said materials, and afterwards discover two or more persons who shall buy or receive any of the same, knowing the same to be stolen, so as two or more be convicted, he shall have a pardon, which shall also be a bar to an appeal. *f. 8.*

And if any person shall be concerned in stealing any of the same, and shall afterwards, being out of prison discover any person to whom he offered to sell, pawn, or deliver the same, so as he be convicted of such misdemeanor; he shall not be liable to be prosecuted for such stealing. *f. 9.*

But this shall not repeal any former law for the punishment of such offenders; and persons punished by this act, shall not for the same offence be prosecuted by any such former law. *f. 11.*

IX. Offering goods suspected to be stolen, to be pawned or sold.

By the 30 G. 2. c. 24. If any person who shall offer by way of pawn, pledge, exchange, or sale any goods, shall not be able or shall refuse to give a satisfactory account of himself, or of the means by which he became possessed thereof; or if there shall be any other reason to suspect that such goods are stolen or otherwise illegally or clandestinely obtained, it shall be lawful for any person, his servants or agents, to whom the same shall be offered, to seize and detain such person and the said goods, and to deliver him as soon as conveniently may be into the custody of the constable or other peace officer, who shall immediately convey such person and the said goods before a justice; and if such justice shall upon examination and inquiry have cause to suspect that the said goods were stolen, or illegally or clandestinely obtained, he may commit him to safe custody for any time not exceeding six days in order to be further examined; and if upon either of the said examinations it shall appear to the satisfaction of such justice, that the said goods were stolen, or illegally or clandestinely obtained, he shall commit the offender to the common gaol or house of correction, there to be dealt with according to law. *f. 7.*

Provided, that if such goods so seized and detained as aforesaid shall afterwards appear to be the property of the person who offered the same to be pawned, exchanged or sold, or that he was authorized by the owner thereof to pawn, exchange or sell the same; yet nevertheless the person who shall so seize or detain the party who offered the said goods, shall be indemnified for having so done. *f. 8.*

X. Advertising or receiving a reward for helping to stolen goods.

By the 25 G. 2. c. 36. If any person shall publicly advertise a reward, with no questions asked, for the return of things stolen or lost, or shall make use of words therein purporting that such reward shall be given, without seizing or making inquiry after the person producing such thing;

thing; or shall offer to return to any pawnbroker, or other the money lent thereon, or other reward for the return thereof, he and also the printer and publisher of such advertisement, shall respectively forfeit 50 l. with costs, to him who shall sue in six months.

And by the 4 G. c. 11. Wherever any person taketh money or other reward, directly or indirectly, under pretence, or upon account of helping any person to any stolen goods; he shall (unless he apprehend the felon, or cause him to be apprehended, and brought to trial, and give evidence against him) be guilty of felony in the same manner as if he had stolen the same. *f. 4.*

XI. Charges of prosecution and conviction how to be paid.

By the statutes of the 3 J. c. 10. and the 27 G. 2. c. 3. The offender, if able, shall pay his own charges for carrying to gaol, and of those who guard him thither; and if he is not able, then the treasurer shall pay the same out of the county rates; as is shewn more at large in title **Commitment.**

And by the 25 G. 2. c. 36. The court before whom any person hath been convicted of any grand or petit larceny, may at the prayer of the prosecutor, and on consideration of his circumstances, order the county treasurer to pay him such sum as they shall judge reasonable, not exceeding the expences he was put to in carrying on the prosecution, with a reasonable allowance for his time and trouble: and the clerk of assize, or of the peace, shall forthwith make out such order, and deliver the same to the prosecutor, on payment of 1 s. and the treasurer shall pay the same on sight, which shall be allowed in his accounts. *f. 11.*

And by the aforesaid act of the 27 G. 2. c. 3. When any poor person shall appear on his recognizance, in such case, to give evidence, the court may allow him his reasonable charges, to be paid in like manner by the treasurer; the proper officer to have 6 d. for making out the order. Except in *Middlesex*, where the same shall be paid by the overseers of the poor where the person was apprehended.

Larceny.

Warrant for larceny.

Westmorland. { To the constable of —

FOrasmuch as A. I. of — in the county of — yeoman, hath this day made information and complaint upon oath, before me — one of his majesty's justices of the peace for the said county, that this present day divers goods of him the said A. I. to wit, — have feloniously been stolen, taken and carried away from the house of him the said A. I. at — aforesaid in the county aforesaid, and that he hath just cause to suspect, and doth suspect that A. O. late of — yeoman, feloniously did steal, take, and carry away the same: These are therefore to command you forthwith to apprehend him the said A. O. and to bring him before me to answer unto the said information and complaint, and to be further dealt withal according to law: Herein fail you not. Given under my hand and seal the — day of — in the year —.

Note; The form of a warrant to search for stolen goods is inserted under the title *Search warrant*.

Indictment for grand or petit larceny in general.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of — in the county of — labourer, on the — day of — in the — year of the reign of — with force and arms, at — in the county aforesaid, one linen sheet of the value of — of the goods and chattels of one A. I. then and there being, feloniously did steal, take, and carry away; against the peace of our said lord the king, his crown and dignity.

Indictment for picking of pockets, or otherwise privately stealing from the person.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of — in the parish of — yeoman, on the — day of — in the — year of the reign of — with force and arms, at the parish aforesaid in the county aforesaid,

said, one silver watch of the value of — of the goods and chattels of one A. I. from the person of the said A. I. subtilly, privily, craftily, and without the knowledge of the said A. I. then and there feloniously did steal, take and carry away; against the peace of our said lord the king, his crown and dignity.

Indictment for breaking a house in the day time,
some person being therein.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of — in the county of — labourer, on the — day of — in the — year of the reign of — at the hour of — in the afternoon of the same day, with force and arms, at — in the county of — the dwelling house of one A. I. there situate, (one B. I. wife of the said A. I. in the same house in the peace of of God and of our said lord the king then being) feloniously did break and enter, and one silver spoon of the value of — of the goods and chattels of him the said A. I. then and there feloniously did steal, take, and carry away, and her the said B. I. then and there in bodily fear and danger of her life feloniously did put; against the peace of our said lord the king, his crown and dignity.

Indictment for breaking a house in the day time,
(no person being therein.)

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of — on the — day of — in the — year of the reign of — at the hour of — in the afternoon of the same day, with force and arms, at — in the county aforesaid, the dwelling house of one A. I. there situate, feloniously did break and enter, and one silver spoon of the value of — of the goods and chattels of him the said A. I. then and there feloniously did steal, take, and carry away; against the peace of our said lord the king, his crown and dignity.

Indictment

Indictment for stealing of goods out of a shop, warehouse, coach-house, or stable.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of _____ in the county aforesaid, labourer, on the _____ day of _____ in the _____ year of the reign of _____ with force and arms, at _____ in the county aforesaid, one piece of cloth of the value of _____ of the goods and chattels of one A. I. in the shop of him the said A. I. then and there being found, then and there privately and feloniously did steal, take, and carry away; against the peace of our said lord the king, his crown and dignity.

Leather.

Concerning the duties on leather, see title *Crosse*.

THERE are several statutes unrepealed, which were made before the first year of the reign of K. James the first, concerning leather; but the act made in that year renders them all useless, the same being intended to reduce all the acts into one relating to that commodity; which same thing was attempted in that king's reign, with success, in divers other articles.

Therefore in this title I shall go no farther back than the statute of the 17. c. 22. And to avoid abundance of repetitions, I will first insert the methods of recovering the several penalties, and will then proceed with this article in its several progresses, in the order of time, from the first slaying of the hide, to its being at last sold and manufactured in leather, or exported.

- I. Of the penalties under this title.
- II. Of hides before they come to the tanner.
- III. Of the tanning of hides.
- IV. Of the currying of hides.
- V. Of the searching and sealing of leather.
- VI. Of the triers of leather.

VII. Of

VII. Of the selling and registering of leather.

VIII. Of the manufacturing of leather, or exporting it.

I. Of the penalties under this title.

1. All forfeitures by the act of the 1 J. c. 22. not hereafter otherwise specially directed, shall be divided one third to the king, one third to him that shall sue, and one third to the city, town, or lord of the liberty. 1 J. c. 22. f. 46.

Money and goods forfeited by the 1 J. How to be distributed.

And all leather, shoes, or other things made of tanned or curried leather, seized and condemned by the triers hereafter mentioned, by the said statute of the 1 J. c. 22. if in London, shall be brought to Guild-hall, and prized by indifferent persons, and the value thereof divided, one third to the seisor, one third to the chamber of London, and one third to such poor as the mayor and four aldermen shall appoint: If in any other city, town, or place, they shall be brought to the common hall of such town, or to some convenient and open place to be appointed by the lord of the liberty where no common hall is, there to be prized as aforesaid, and the value divided, one third to the poor and in other deeds of charity after the discretion of the mayor or lord of the liberty, one third to the mayor for the use of the commonalty, or to the lord of the liberty where there is no mayor or other such like officer, and one third to the seisor. 1 J. c. 22. f. 46.

2. And the abovesaid forfeitures on the 1 J. may be sued for in any court of record, by action of debt, bill, plaint, or information, or otherwise. 1 J. c. 22. f. 46.

Forfeitures on the 1 J. and on the 9 An. how to be recovered.

And likewise all justices of assize, justices of the peace, mayors, and stewards of leets, may inquire thereof in their sessions, leet, or law day, and hear and determine the same. 1 J. c. 22. f. 50.

And moreover by the 9 An. c. 11. Any two justices near where the forfeitures on the said act of the 9 An. shall be incurred, or offence committed, or where any offence shall be committed against the aforesaid act of 1 J. c. 22. may hear and determine the same; who shall on information or complaint, in three months after any seizure made, or offence committed, summon the party accused, and the witnesses; and on appearance or contempt in not appearing (on proof of notice given) shall proceed to examine witnesses

witnesses on oath, and give judgment, and issue warrants for levying the penalties, and cause the distress to be sold, if not redeemed in six days. And if either party is not satisfied with the judgment, he may appeal to the next sessions, who shall determine the same, and in case of conviction, issue warrants for levying the penalties. *f. 36.*

Forfeitures on
the 13 and 14
C. 2. c. 7.

3. All forfeitures and sums by the act of the 13 & 14 C. 2. c. 7. shall be recovered in any court at *Westminster*, or in any court of record in the city, town, county, or place where the offence shall be committed; to be distributed half to the king, and half to the informer. *f. 10.*

II. Of hides before they come to the tanner.

Gashing hides.

1. If any raw hide or calf skin shall wilfully or negligently be gashed or cut in slaying, or being gashed or cut shall be offered to sale; the butcher or other person who impaired the same, or the person offering the same to sale, shall forfeit 2s. 6d. for every hide, and 1s. for every calf skin, half to the poor of the parish where it is found or offered to sale, and half to him that shall sue. 9 An. c. 11. *f. 11.*

Watering hides.

2. No butcher shall water any hide, except in *June, July, and August*; on pain of 3s. 4d. 1 J. c. 22. *f. 2.*

Rotten hides.

3. No butcher shall offer any hide to sale, being putrefied; on pain of 3s. 4d. 1 J. c. 22. *f. 2.*

Who may buy
hides.

4. None but tanners shall buy any rough hide or skin (except salt hides for the use of ships); on pain of forfeiting the same, or the value thereof. 1 J. c. 22. *f. 7.*

Forestalling
hides.

5. No person shall forestall any hides, nor buy any but in open fair or market, unless of persons killing the beast for their own household, on pain of 6s. 8d. 1 J. c. 22. *f. 7.*

III. Of the tanning of hides.

Who may be a
tanner.

1. No person shall be a tanner, but who hath served seven years, except the wife or such son of a tanner as hath used the trade four years, or the son or daughter of a tanner, or such person who shall marry such wife or daughter to whom he shall leave a tan house and fats; on pain of forfeiting all such leather by him tanned, or of which he shall receive any profit, or the value thereof. 1 J. c. 22. *f. 5.*

No tanner shall be a butcher, on pain of 6s. 8d. a day.

1 *J. c. 22. f. 4.*

No tanner shall be of any craft exercised in the cutting or working of leather; on pain of forfeiting the same, or the value thereof. 1 *J. c. 22. f. 6.*

2. No person shall regrate or ingrofs any oaken bark; Oak barkes on pain of forfeiting the same, or the value thereof. 1 *J.*

c. 22. f. 19.

No person shall fell any oak trees meet to be barked, where bark is worth 2s. a cart load, over and above the charges of barking and pilling (except timber for houses, ships, or mills) but between *April 1.* and *June 30.* on pain of forfeiting the same, or double value thereof. 1 *J. c. 22. f. 20.*

No purveyor of timber shall fell for the king's use, any oak timber tree meet to be barked, but in barking time (except for the king's houses or ships); or shall receive any profit by any lops, tops, or bark of trees to be taken by them; or shall take or dispose from the owner, any more of any tree so to be taken, than only the timber thereof to be used only about the king's buildings or ships: on pain of forfeiting to the party grieved, for every tree, and for the lops, tops, and bark of every tree 40s. And the owner may withhold any bark, lop, or top, any commission or other matter notwithstanding. 1 *J. c. 22. f. 21.*

3. No tanner shall suffer any hide or skin to lie in the limes till they be overlimed; nor shall put them into any tan fats, before the lime be perfectly fokened and wrought out of them; nor shall use in the tanning thereof any thing but ash bark, oak bark, tap wort, malt, meal, lime, culver dung, or hen dung; nor shall suffer it to lie wet till it be frozen; nor shall dry it by the fire, or summer sun; nor shall tan any hide or skin putrefied or rotten; nor shall suffer the hides for utter sole leather to lie in the woozes less than 12 months, nor the hides for upper leathers less than nine months; nor shall negligently work the hides in the woozes, but shall renew and make strong their woozes, as often as shall be requisite; nor shall put to sale any leather tanned in any other sort than by this statute is limited: on pain of forfeiting every hide or skin tanned and offered to sale contrary to this act, or the value thereof. 1 *J. c. 22. f. 11.*

No tanner shall raise with any mixtures any hide to be converted to backs, bend leather, clouting leather or any other sole leather, except they be for largeness, state, and growth

Leather.

growth fit for that purpose, to be tried by the triers hereafter mentioned; on pain of forfeiting the same. 1 *J. c. 22. f. 12, 13.*

No persons shall set the fats in tan hills, or other places, where the woozes or leather may take any unkind heats; or shall put any leather into any hot or warm woozes; or shall tan any hide or skin with any hot or warm woozes; on pain of 10*l.* and the pillory on three market days in the next market town. 1 *J. c. 22. f. 16, 17.*

If any tanner or other person shall shave or cause to be shaved any hide or calf skin, before it be thoroughly tanned, whereby it shall be impaired; he shall forfeit the same or the value, half to the king, and half to him that shall sue. 9 *An. c. 11. f. 12.*

Every tanner, who shall shave, cut, and rake the upper leather hides all over, or the necks of their backs and butts; shall forfeit the same, or the value thereof, and the searchers and sealers hereafter mentioned may seize them. 13 & 14 *C. 2. c. 7. f. 8.*

If any tanner shall offer to sale any leather not thoroughly tanned or dried, to the satisfaction of the triers; he shall forfeit so much as shall be so deficient, whether whole hides or part thereof. 1 *J. c. 22. f. 15.*

IV. Of the currying of hides.

Who may be a currier.

1. No currier shall be a tanner, shoemaker, butcher, or other artificer using cutting of leather; on pain of forfeiting 6*s.* 8*d.* for every hide he shall curry during the time that he shall occupy any of the said misteries. 1 *J. c. 22. f. 25.*

Leather delivered to the currier.

2. Every artificer dealing in cutting of leather, or other person, who shall buy any red tanned leather, within *London*, or three miles thereof, shall before the next market day for sale of leather, give notice thereof to one of the curriers company, and in three weeks after shall deliver the leather so bought (except what shall be used for soles without being curried, tallowed, or dressed) to the said currier, to be curried, tallowed, or dressed; on pain of 6*s.* 8*d.* for every back, butt, hide, or calf skin. 13 & 14 *C. 2. c. 7. f. 13.*

In what time he shall curry it.

3. No currier shall refuse to curry any leather to him brought by any artificer being a cutter of leather, and bringing with him sufficient stuff for the perfect liquoring the same, with as convenient speed as may be, not exceeding eight days in summer, and 16 in winter, in the presence of the said artificer, if he will be present, otherwise in his

absence;

absence; on pain of forfeiting to the party griev'd for every hide or piece of leather not in this manner curried, and well and speedily dressed, 10 s. 1 *J. c. 22. f. 26.*

And by the 12 G. 2. c. 25. If any currier shall refuse to curry any leather brought or sent to him by any person dealing or working in leather, or shall neglect to curry the same in 16 days between *Sept. 28.* and *March 25.* and in 8 days in the remaining part of the year; he shall, on conviction before one justice, on the oath of one witness, forfeit any sum not exceeding 5 l. by distress; half to the informer, and half to the poor. Persons aggrieved may appeal to the next sessions. *f. 4, 5, 6.*

4. No person shall curry any leather in the house of any shoemaker or other person, but only in his own house situate in a corporate or market town; nor shall curry any leather except it be perfectly tanned; nor shall curry any hide or skin being not thoroughly dry after his wet season; in which wet season, he shall not use any stale urine, or any other deceitful or subtle mixture or means to hurt the same; nor shall curry any leather meet for utter sole leather, with any other stuff than with hard tallow, nor with any less of that than the leather will receive; nor shall curry any leather meet for over leather, and inner soles, but with sufficient stuff, being fresh and not salt, and thoroughly liquored till it can receive no more; nor shall burn or scald any hide or leather in the currying; nor shall shave any leather too thin, nor shall gash or hurt any leather in the shaving, or by any other means; but shall work the same sufficiently in all points: on pain of forfeiting for every such offence (other than in gashing or hurting in shaving) 6 s. 8 d. and the value of such skin or hide marred by his evil workmanship; and for every offence in gashing or hurting by shaving, double so much to the party griev'd as the leather shall be impaired thereby, by the judgment of the wardens of the curriers, and of the warden of the company whereof the party griev'd shall be. 1 *J. c. 22. f. 22.*

Manner of currying.

V. Of the searching and sealing of leather.

1. The mayor and aldermen of *London* (on pain of 40 l. for every year they make default, half to the king, and half to him that shall sue) shall yearly appoint 8 freemen of some of the companies of cordwainers, curriers, saddlers, or girdlers (whereof one shall be a sealer, and keep a seal for the sealing of leather); who shall be sworn before them

Searchers and sealers in London.

to do their office truly: And they shall search and view all tanned leather brought to market, whether it is thoroughly tanned and tried; and if it is, shall seal the same. 1 *J. c.* 22. *f.* 31.

And four of the said searchers shall be removed at the end of the year, and four new ones chosen; and no one shall continue in the office above two years together, nor shall be employed again till after the end of three years; on pain of 10*l.* a month. 1 *J. c.* 22. *f.* 36.

In other places.

2. And all mayors, and lords of liberties, fairs, and markets, out of the compass of three miles from *London*, shall (on like pain of 40*l.*) appoint and swear yearly two, three, or more honest and skilful men, to be searchers within their precincts; who shall search as often as they shall think good, or need shall be, and shall seal what they find sufficient: And if they find any leather offered to be sold, or brought to be sealed, which shall be insufficiently tanned or curried, or any boots, shoes, bridles, or other thing made of tanned or curried leather, insufficiently tanned, curried, or wrought, they may seize and keep the same, till they be tried by the triers. 1 *J. c.* 22. *f.* 32.

Fee for sealing.

3. The wardens of the curriers shall search and try all such curried leather as shall be brought to any of their company to be curried, and shall with a seal therefore to be prepared, with convenient speed, not exceeding one day after the currying and request made, seal such leather as they shall find sufficiently curried; taking for every hide so sealed after the rate of one penny for the dicker, and for every six dozen of calf skins one penny, to be paid by the currier: on pain of forfeiture for every hide not searched and sealed 6*s.* 8*d.* 1 *J. c.* 22. *f.* 27.

But they shall not visit, search, or seize any leather, hide, or skin, but such as shall be curried or dressed within *London* or three miles thereof, by some members of their own company, nor in any other place but in the open market, or in the shops, houses, or warehouses of such curriers. 1 *W. sess.* 1. *c.* 33. *f.* 4.

Penalty on the searcher or sealer misbehaving.

4. If any searcher or sealer shall refuse with convenient speed to seal any leather which is sufficient, or do allow that which is insufficient; he shall forfeit 40*s.* If he shall receive any bribe, or exact any other fee than by this act is appointed, he shall forfeit 20*l.* And if he shall refuse to execute his office, he shall forfeit 10*l.* 1 *J. c.* 22. *f.* 37.

5. If

Leather.

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5. If any person shall deny, or withstand, or not suffer the searching or seizing of insufficient wares, he shall forfeit 5l. 1 *J. c. 22. f. 40.* Penalty on hindring the searcher.

VI. Of the triers of leather.

1. The mayor of *London* (on pain of 5l. half to the king, and half to him that shall sue) shall within six days after notice given to him of any seizure of any leather, red and unwrought, appoint six triers, two of the cordwainers company; two of the curriers, and two of the tanners using *Leadenhall* market; who upon their oaths to be taken before him, shall on the second or third market day for leather (to be holden on *Tuesday*, 13 & 14 *C. 2. c. 7. f. 9.*) in the afternoon, try whether the same be sufficient or not. 1 *J. c. 22. f. 33, 35.* Triers in London.

2. Every other mayor, or lord of liberty, out of the compass of three miles from *London*, within whose precincts any seizure of any tanned leather, red or curried, or of any shoes, boots, or other wares made of tanned leather, shall be, shall (on like pain) with all convenient speed after notice given to him of such seizure, appoint six honest and expert men, to try whether the same be sufficient or not; the same trial to be openly on some market day, and within 15 at the farthest from the time of the seizure, upon the oaths of the said triers. 1 *J. c. 22. f. 34.* In other places.

3. Triers not doing their duty, shall forfeit 5l. 1 *J. c. 22. f. 35.* Triers misbehaving.

VII. Of the selling and registering of leather.

1. No person shall put to sale any tanned leather red and unwrought, but in open fair or market, unless the same hath been first searched and sealed; nor shall offer to sale any tanned leather red and unwrought before it be searched and sealed; on pain of forfeiting the same, or the value thereof, and also for every hide or piece 6s. 8d. and for every dozen of calves skins 3s. 4d. 1 *J. c. 22. f. 14.* Selling unsealed.

But no person shall incur any penalty for selling or buying any sheep skins unsearched or unsealed. 4 *J. c. 6. f. 2.*

2. All red tanned leather shall be bought only in the open fair or market, and not in any house, yard, shop, or other place; on pain of forfeiting the same, or the value thereof, and the contract to be void. And all such leather shall be searched and sealed before sale, and on sale shall be registered, and an entry made both by the buyer and seller, both being present, Where to be sold and registered.

present, and their names and dwellings entred into the book of the register; on pain that every such buyer or seller who shall make default, shall forfeit the same or the value thereof. 13 & 14 C. 2. c. 7. s. 4.

Fee for registering.

3. Searchers and sealers shall keep a register, wherein they shall enter all bargains made for leather, hides, or skins, during the fair or market, being thereunto required by the buyer or seller, with the prices; taking for searching, sealing, and registering of every ten hides, backs, or butts, of the seller, 2d. and so after the rate; and for every six dozen of calves skins or sheep skins 2d. and of the buyer after the same rate. 17. c. 22. s. 41.

Registering in London.

4. All red tanned leather which shall be brought into London, or within three miles thereof, shall be brought to Leadenhall before it be housed, and there viewed whether it hath been searched or sealed, and shall be registred by the searchers, with half such fees to be paid for such of the said tanned leather as shall be bought out of London, or three miles compass from the same, and searched and sealed before it be brought within the city; on pain that every person housing or not bringing his leather to Leadenhall as aforesaid, shall forfeit for every hide or skin 6s. 8d. 17. c. 22. s. 38.

Buyer of leather selling it again unwrought.

5. By the 17. c. 22. No person shall buy any tanned leather unwrought, but who shall work the same into wares; on pain of forfeiting the same, or the value thereof. s. 8.

But by the 12 G. 2. c. 25. All persons who deal or work in leather, may buy all sorts of tanned leather in open fair or market, whether curried or uncurried, being first searched and sealed; and may cut and sell the same in any small pieces in their open shops. s. 1.

And by the 1 W. sess. 1. c. 33. All dealers or workers in leather may buy all sorts of red tanned leather in open fair or market, whether curried or uncurried, being first searched and sealed, and may sell it again in their open shops, or cut and convert it into other made ware. s. 5.

Where it may be sold in London.

6. Within London, or three miles thereof, no person shall sell any wares appertaining to the mystery of any artificer, cutting leather, but only in open shop, common fair or market, whereby the wardens may have search thereof; on pain of forfeiting the same, and also 10s. 17. c. 22. s. 45.

VIII. Of

VIII. Of the manufacturing of leather, or exporting it.

1. No shoemaker shall make any boots or shoes, or Shoemaker's any part of them, of *English* leather wet curried (other duty. than deer skins, calves skins, or goat skins made and dressed like *Spanish* leather), but of leather well and truly tanned and curried in manner aforesaid, or of leather well and truly tanned only, and well sewed, without mixing overlathers, that is to say, part being neats leather, and part calves leather; nor shall put into any part of any shoes or boots, any leather made of a sheep skin, bull hide, or horse hide; nor in the upper leather of any shoes, or into the nether part of any boots (the inner part of the shoe only excepted) any part of any hide from which the sole leather is cut, called the wombs, necks, shank, flank, powle or cheek; nor shall put into the utter sole any other leather, than the best of the ox or steer hide; nor into the inner sole, any other leather than the wombs, neck, powle, or cheek; nor into the trefwells of the double soled shoes, other than the flanks of any the hides aforesaid; nor shall make or put to sale between *September* 30. and *April* 20. any shoes or boots meet for any person above four years old, wherein shall be any dry *English* leather, other than calves skins or goat skins made or dressed like *Spanish* leather; on pain of forfeiting for every pair of shoes or boots 3s. 4d. and the value thereof. 1 J. c. 22. s. 28.

2. And if any shoemaker, saddler, or other artificer Artificers work- using of leather, do make any wares of any tanned leather ing bad leather. insufficiently tanned, or of tanned and curried leather being not sufficiently tanned and curried; he shall forfeit the same, and the value thereof. 1 J. c. 22. s. 44.

3. If any shoemaker or cobbler within *London* or three Shoemakers in miles thereof, shall put any tanned leather into any boots London. or shoes, or other things made of tanned leather, which shall not be well and perfectly tanned; or do put any curried leather into boots or shoes or other things made of leather, which shall not be sufficiently tanned and curried, and also sealed; he shall forfeit the same, and the value thereof. 1 J. c. 22. s. 44.

4. And the master and wardens of the mysteries of cord- Search in Lon- wainers, curriers, girdlers, and sadlers of *London* (on pain don for insuffi- of 40l. for every year they make default, half to the king cient wares. and half to him that shall sue) shall once a quarter or oftner make search and view of all boots and shoes, and other

Leather:

other wares made of tanned leather, within three miles of London, and if they are not truly wrought, they may seize and carry the same to their several common halls. 1 *Y. c. 22. f. 29.*

And by the 1 *W. sess. 1. c. 33. f. 3.* Every hide, skin, or piece of tanned leather shaved or liquored, of what colour soever, with any lawful liquor or dressing, and being well and truly curried, shall be deemed ware within the said statute of the 1 *Y. c. 22.*

Exportation.

5. All sorts of leather and skins, tanned or dressed, may be exported. 20 *C. 2. c. 5. 9 An. c. 6. f. 4.*

Lecturer.

BY the 13 & 14 *C. 2. c. 4.* Lecturers in churches, unlicensed, or not conforming to the liturgy, shall be disabled, and shall also suffer three months imprisonment in the common gaol; and two justices (or the mayor in a town corporate) shall, upon certificate from the ordinary, commit them accordingly. *f. 19-23.*

Leet.

Meaning of the word.

1. **L E E T** (*leth, lethe, lathe*) is of Saxon original, and seemeth to be no other than the court of the *lathe*; as the county court is the court of the county. For in ancient times the counties were subdivided into *lathe*s, *rapes*, *wapentakes*, *hundreds*, and the like. And the sheriff twice a year performed his *tourn* or perambulation, for the execution of justice throughout the county. Afterwards this power of holding courts was granted to divers great men, within certain districts. And from hence, these courts, holden within particular parts of the county, have descended unto us without variation, under the name of the *leet*, *lath*, or *lathe* courts.

Leet, what.

2. The court *leet* is a court of record, having the same jurisdiction within some particular precinct, which the sheriff's *torn* hath in the county. 2 *Haw. 72.*

3. For

3. For the leet, or view of frankpledge, was by the king (for ease of the people) divided, and derived from the torn; who did grant to the lords to have the view of the tenants and resiants within their manors; so as the tenants and resiants should have the same justice that they had before in the torn, done unto them at their own doors, without any charge or loss of time. *2 Inst. 71.*

Leet derived from the torn.

4. The institution hereof for keeping of the king's peace, Frankpledge. was, that every freeman at his age of 12 years (except peers, clergymen, and tenants in ancient demesne, *2 Haw. 57.*) should in the leet, if he were in any leet, or in the torn if he were not in any leet, take the oath of allegiance to the king; and that pledges or sureties should be found for his truth to the king, and to all his people, or else to be kept in prison: This frankpledge consisted most commonly of ten households, which the Saxons called *theothung*, in the north parts they call them *tenmentale*, in other places of England *tithing*; whereof the masters of the nine families who were bound, were of the Saxons called *freoborh*, which in some places is to this day called *freeborow*, that is, free surety, or frankpledge, and the master of the tenth household was called *theothungman*, to this day in the west called *tithingman*, and *tihenheofod*, and *freoborher*, that is, *capitalis plegius*, chief pledge; and these ten masters of families, were bound one for another's family, that each man of their several families should stand to the law, or if he were not forthcoming, that they should answer for the injury or offence by him committed. And the precinct of this frankpledge was called *decenna*, because it consisted most commonly of ten households; and every man of those several households, for whom the pledge or surety was taken, were called *decennarii*; which names are continued as shadows of antiquity to this day. *2 Inst. 73.*

And by the due execution of this law, such peace was universally holden within this realm, as no injuries, homicides, robberies, thefts, riots, tumults, or other offences were committed; so as a man with a white wand might safely have ridden before the conquest, with much money about him, without any weapon, throughout England. *2 Inst. 73.*

But no person is obliged to appear at any leet, within the precincts whereof he doth not reside. *2 Haw. 57.*

5. He that claims a leet by charter, must hold it on the days prescribed by the charter; he that claims it by prescription, may claim to hold it once or twice every year, at any such days as shall upon reasonable warning be ap-

Leet when to be holden.

appointed, if the usage hath been so that it hath been kept at uncertain times; or else it ought to be kept at such certain days and times, as by prescription hath been certainly used. 2 *Inst.* 72.

Offences within the leet, not inquirable in the torn.

6. If a nuisance done within the jurisdiction of the leet, be not presented in the leet, the sheriff in his torn cannot inquire of it; for that which is within the precinct of the leet is exempt from the torn, otherwise there might be a double charge; but in that case a writ may be directed to the sheriff to enquire thereof. 4 *Inst.* 261.

Steward may commit for an affray.

7. It seems that a court leet is so far intrusted with the keeping of the peace within its own precinct, that the steward of it may by recognizance bind any person to the peace, who shall make an affray in his presence, sitting the court, or may commit him to ward, either for want of sureties, or by way of punishment, without demanding any sureties of him, in which case he may afterwards impose a fine according to his discretion. 2 *Haw.* 4.

What felonies are cognizable in the leet.

8. The leet hath power to receive indictments of felonies at the common law, but not of felonies by act of parliament, unless specially limited thereto. 2 *H. H.* 71.

Other publick offences.

9. Furthermore, this court hath cognizance of a great number of offences, both by the common law, and by statute; as for instance, tipling in alehouses; assaults whereby bloodshed ensueth; common barators; bawdy houses, defects in bridges and highways; destroyers of ancient boundaries; bakers; brewers; butchers; curriers; cottagers and inmates; deciners or suitors not appearing in the leet; estrays, waifs, and treasure trove; eaves droppers; forestallers, regrators, ingrossers; destroyers of game; gamesters; hedge breakers; neglecters of hue and cry; higlers; innholders; millers; night walkers; common nuisances; want of pillory and stocks, and common pounds; rescous; scolds; shoemakers; searchers of leather; skoned horses of two years old put on the common; victuallers; constables neglecting watch and ward; weights and measures; and many others by particular statutes. *Wood b. 4. c. 1.*

Private offences.

10. But a man cannot be presented in the leet for surcharging the common, or for digging in the common; because this concerns the private, not the publick interest, and belongs rather to the court baron to inquire of it. *Wood b. 4. c. 1.*

Within what time offences are cognizable.

11. Also no offence is cognizable in the leet, unless it arose since the holding of the last court. 2 *Haw.* 66.

Constables chosen in the leet.

12. The constables of common right are to be chosen and sworn in the leet or torn. 2 *Haw.* 62.

13. The

13. The leet seems not to be within the equity of the jurors. statute of 1 R. 3. which requires that the jurors in the torn shall have 20 s. a year freehold, or 26 s. 8 d. copyhold or customary; for it is said, that any person happening to be present at the leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the steward to be sworn, whether he be resident within the leet or not; by which it seems to be implied, that any person whatsoever is capable of being put upon the jury in a court leet. 2 Haw. 69.

14. Indictments in the leet ought to be by roll indented, one to remain with the indictors, and the other with the steward, to prevent imbezilling. 2 Haw. 69. Indictments to be indented.

15. Although the leet may receive indictments of felony, yet it cannot hear and determine them, but must send them to the gaol delivery, there to be heard and determined, if the offenders are in custody; or remove them by certiorari into the king's bench, that process may be made upon them to outlawry. 2 H. H. 71. Indictments of felonies, how to be certified.

16. It seems to be agreed, that a presentment in the Traverse leet of any offence within the jurisdiction of the court, being neither capital nor concerning any freehold, subjects the party to a *fine* or *amerciament* without any farther proceeding, and admits of no traverse to the truth of it: But if it touch the party's freehold, it may be removed into the king's bench, and there traversed. 1 Haw. 217. 219. 2 Haw. 71.

17. A *fine* is a pecuniary punishment, assessed by the Fine, steward, for an offence or contempt committed in court, or by publick officers out of court, in administration of their offices; a *fine* is always assessed by the steward, and is not to be assessed, though sometimes it is called an *amerciament*; and the lord by a special warrant to the bailiff may distrain, or he may have an action of debt, for a *fine* imposed; but he cannot imprison; but this is the only court that can *fine* and not imprison. Wood b. 4. c. 1. 2 Haw. 61.

18. An *amerciament* is a pecuniary punishment, assessed by the homage or jury, for offences committed out of court by private persons, to be mitigated by assurers (from *asseuer*, to tax), who are to affirm the reasonableness thereof upon their oaths, where no express penalty is inflicted by statute; and for this also the lord may have an action of debt, or may distrain of common right, and impound the distress, or sell it at his pleasure, but cannot imprison for it. Wood b. 4. c. 1. Amerciament,

19. And

Amerciament
how recovered,

19. And upon presentment of a nuisance, the steward may either amerce the person, and order him also to remove it by such a day, under pain of forfeiting a certain sum; or he may order him to remove it, under such a pain, without amercing him at all: and on presentment at another court, that he hath not removed such nuisance (having had notice thereof) the pain may be recovered by distress or action of debt, without farther proceeding. *2 Haw. 61.*

By-laws,

20. It seemeth that of common right any court leet, with the assent of the tenants, may make by-laws under certain penalties, in relation to matters properly within the cognizance of such court, as the reparation of the highways, and the like: and also a court baron by custom may make by-laws, for the well regulating of commons, and such like private matters. And therefore where a court leet and baron are holden together, as they usually are, it seems, that what is transacted therein, in relation to publick matters, shall be applied to the jurisdiction of the court leet, and what is done in relation to private matters, shall be intended to be done by the court baron. *2 Haw. 68.*

Pillory and
stocks,

21. The lord of the leet ought to have a pillory and tumbrel; and for want thereof, he may be fined, or his liberty seized. *Cro. El. 698.*

But the stocks are to be provided at the charge of the town; for originally they were not to punish, but to keep men in hold. *Wood b. 4. c. 1.*

Business devolved
on the sessions,

22. But the business of the leet hath declined for many years; and is devolved on the quarter sessions.

Letter.

BY the 9 G. c. 22. and 27 G. 2. c. 15. If any person shall knowingly send any letter, without any name subscribed thereto, or signed with a fictitious name, demanding money, or other valuable thing; or threatening to kill or murder any of his majesty's subjects, or to burn their houses, outhouses, barns, stacks of corn or grain, hay or straw; tho' no money or venison or other valuable thing be demanded by such letter; or shall rescue any person in custody for such offence; he shall be guilty of felony without benefit of clergy.

Seditious or defamatory letters, belong to title *Libel*.
Lewdness.

Lewdness.

1. IF any offend their brethren by adultery, whoredom, incest, or any other uncleanness, the churchwardens shall present them to the ordinary, and they shall not be admitted to the holy communion, till they be reformed.

Can. 109.

2. But altho' lewdness be properly punishable by the ecclesiastical law, yet the offence of keeping a bawdy house cometh also under the cognizance of the law temporal, as a common nuisance, not only in respect of its endangering the publick peace, by drawing together dissolute and debauched persons, but also in respect of its apparent tendency to corrupt the manners of both sexes.

3 Inst. 205. 1 Haw. 196.

3. And in general, all open lewdness grossly scandalous is punishable upon indictment at the common law.

1 Haw. 7.

4. And offenders of this kind are punishable not only with fine and imprisonment, but also with such infamous punishment as to the court in discretion shall seem proper.

1 Haw. 196.

5. And upon information given to a constable, that a man and woman are in adultery or fornication together, or that a man and woman of evil report are gone to a suspected house together in the night, the officer may take company with him, and if he find them so, he may carry them before a justice, to find sureties of the good behaviour.

Dalt. c. 124. 2 Haw. 61.

6. For it seems always to have been the better opinion, that a man may be bound to his good behaviour, for haunting bawdy houses with women of bad fame, as also for keeping bad women in his own house.

1 Haw. 132.

7. And a wife may be indicted together with her husband, and condemned to the pillory with him, for keeping a bawdy house; for this is an offence as to the government of the house; in which the wife has a principal share; and also such an offence as may generally be presumed to be managed by the intrigues of her sex.

1 Haw. 2.

8. And if a wife go away, and remain with an adulterer without being reconciled to her husband, she shall lose her dower.

2 Inst. 435.

9. But if a person is indicted for frequenting a bawdy house, it must appear that he knew it to be such a house; and

and it must be expressly alledged that it is a bawdy house, and not that it is suspected to be so. *Wood b. 3. c. 3.*

10. On an indictment for keeping a disorderly house, a female witness swore, that she was a sailor's wife, and during her husband's absence out of the realm she had often prostituted her self there: Lord *Raymond* said, it was an odious piece of evidence and ought not to be heard. *Barl. Bawdy-h.*

11. But it is said a woman cannot be indicted for being a bawd generally, for that the bare solicitation of chastity is not indictable. *1 Haw. 196. 1 Salk. 382.*

Indictment for keeping a disorderly house.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of — in the said county, labourer, on the — day of — in the — year of the reign of — and at divers other times as well before as after, with force and arms at — in the county aforesaid, did keep and maintain, and yet doth keep and maintain, a certain common, ill-governed and disorderly house, and in his said house, for his own lucre and gain, certain evil and ill-disposed persons, as well men as women, of evil name and fame, and of dishonest conversation, to frequent and come together aben, and the said divers other times, there unlawfully and wilfully did cause and procure; and the said men and women, in his said house, at unlawful times, as well in the night as in the day, then and the said other times, there to be and remain, drinking, tipling, whoring, and misbehaving themselves, unlawfully and wilfully did permit, and yet doth permit, to the great damage and common nuisance of all the subjects of our said lord the king, and against the peace of our said lord the king, his crown and dignity.

Libel.

I. What it is.

II. Who are punishable for it.

III. How punishable.

I. What

I. What it is.

A Libel is a malicious defamation of any person, expressed either in printing or writing, signs or pictures, to asperse the reputation of one that is alive, or the memory of one that is dead. Wood b. 3. c. 3.

A malicious defamation] And the scandal which is expressed in a scoffing and ironical manner, is as properly a malicious defamation, as that which is expressed in direct terms; as where a person proposes one to be imitated for his courage, who is known to be a great statesman, but no soldier; and another to be imitated for his learning, who is known to be a great general, but no scholar; and the like: which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities, as if it had directly and expressly done so. 1 Haw. 194.

And from the same foundation it hath also been resolved, that a defamatory writing, expressing only one or two letters of a name, in such a manner, that from what goes before and follows after, it must needs be understood to signify such a particular person, in the plain, obvious, and natural construction of the whole, and would be perfect nonsense if restrained to any other meaning, is as properly a libel, as if it had expressed the whole name at large; for it brings the utmost contempt upon the law, to suffer its justice to be eluded by such trifling evasions: And it is a ridiculous absurdity to say, that a writing which is understood by every the meanest capacity, cannot possibly be understood by a judge and jury. 1 Haw. 194.

And it matters not whether the libel be true, or whether the party against whom it is made be of good or bad fame; for in a settled state of government, the party grieved ought to complain, for any injury done to him, in the ordinary course of law, and not by any means to revenge himself, either by the odious course of libelling, or otherwise. 5 Co. 125. But this is to be understood, when the prosecution is by information or indictment; but in an action on the case, one may justify that it is true. Wood b. 3. c. 3.

Of any person] Where a writing inveighs against mankind in general, or against a particular order of men, as for instance, men of the gown, this is no libel; but it must descend to particulars and individuals to make it a libel. 3 Salk. 224.

And it hath been agreed in the court of king's bench, that a writing full of obscene ribaldry, without any kind of reflection

reflection upon any one, is not punishable at all by any prosecution at common law: yet it seems that the author may be bound to his good behaviour, as a scandalous person of evil fame. 1 *Haw.* 195.

But if the libel is only against a private person, yet it deserveth severe punishment; for albeit the libel be against one, yet it inciteth all those of the same family, kindred, or society, to revenge, and so tendeth by consequence to quarrels, and breach, of the peace, and may be the cause of effusion of blood, and of great inconvenience: But if it be against a magistrate, or other publick person, it is a greater offence; for it concerneth not only the breach of the peace, but the scandal of the government. 5 *Co.* 125.

Expressed either in printing or writing, signs or pictures] A libel is either in writing, or without writing: In writing, when an epigram, rhyme, or other writing is published to the contumely of another, by which his fame or dignity may be prejudiced: Without writing, may be by pictures, as to paint the party in any shameful and ignominious manner; or by signs, as to fix a gallows, or other reproachful and ignominious signs at a man's door. 5 *Co.* 125.

E. 7 *G.* Mayor of *Northampton's* case. He sent lord *Halifax* a licence to keep a publick house, which the court said was a libel in the case of a person of his quality, and granted an information for it. *Str.* 422.

Or the memory of one that is dead] For the offence is the same, whether the person libelled be alive or dead. 5 *Co.* 125.

II. Who are punishable for it.

It is certain, that not only he who composes a libel, or procures another to compose it, but also he who publishes, or procures another to publish it, are in danger of being punished for it; and it is said not to be material, whether he who disperses a libel knew any thing of the contents or effect of it or not; for nothing would be more easy, than to publish the most virulent papers with the greatest security, if the concealing the purport of them from an illiterate publisher, would make him safe in dispersing them. 1 *Haw.* 195.

Also it hath been said, that if he who hath either read a libel himself, or hath heard it read by another, do afterwards maliciously read or repeat any part of it, in the presence of others, or lend or shew it to another, he is guilty of an unlawful publication of it. 1 *Haw.* 195.

Also it hath been holden, that the copying of a libel shall be a conclusive evidence of the publication of it, unless the party can prove, that he delivered it to a magistrate to examine it. 1 *Haw.* 195.

And it hath been ruled, that the finding a libel on a bookseller's shelf, is a publication of it by the bookseller; and that it is no excuse to say, that the servant took it into the shop without the master's knowledge; for the law presumes the master to be acquainted with what the servant does. *Seff. C. V.* 1. p. 33. *K. and Dodd*, 10 G.

And it seems to be the better opinion, that he who first writes a libel dictated by another, is thereby guilty of making it, and consequently punishable for the bare writing; for it was no libel, till it was reduced to writing: For the essence of a libel consisteth in the writing of it; for if a man speaks such words, unless the words be put in writing, it is not a libel. 2 *Salk.* 419. 1 *Haw.* 195.

Also it hath been resolved, that the sending of a letter full of provoking language to another, without publishing it, is highly punishable, as manifestly tending to a disturbance of the peace. 1 *Haw.* 195.

But it hath been resolved, that he who barely reads a libel in the presence of another, without knowing it before to be a libel, or who is only proved to have had a libel in his custody, shall not in respect of any such act be adjudged the publisher of it. But the having in one's custody a written copy of a libel publicly known, is an evidence of the publication of it. 1 *Haw.* 196.

The way for a man to keep himself out of danger in such cases is, if he finds a libel, and it be composed against a private person, he either may burn it, or forthwith deliver it to a magistrate; but if it concerns a magistrate, or other publick person, he ought immediately to deliver it to a magistrate, to the intent that by examination and enquiry, the author may be found and punished. 5 *Co.* 125.

III. How punishable.

There seemeth to be no doubt, but that the offenders may be condemned to pay such fine, and also to suffer such corporal punishment, as to the court in discretion shall seem proper, according to the heinousness of the crime, and the circumstances of the offender. 1 *Haw.* 196.

And it hath been adjudged, that libels, as having a direct and immediate tendency to a breach of the peace, are indictable before justices of the peace. 2 *Haw.* 40.

On

On an indictment setting forth the offence, according to the tenor and to the effect following, it was agreed by the court, that to the effect following had been naught, being vague and useless words; for the court must judge of the words themselves: but the words, according to the tenor, do correct the defect; for they import the very words themselves, for the tenor of a thing is the transcript and true copy of it, to which it may be compared: and therefore of words spoken there can be no tenor, because there is no written original. 2 Salk. 417. 3 Salk. 225.

And it must be proved to be written or published, in the county laid in the indictment; all matters of crime being local. Read. Lib. State Tr. V. 3. 774, 775. V. 4. 672.

Indictment for a libel.

THE jurors for our lord the king upon their oath present, that A. O. late of——in the county of——gentleman, not having god before his eyes, but moved by the instigation of the devil, and falsely and maliciously contriving and intending to bring our said lord the king into hatred and infamy amongst his subjects, and to move sedition amongst the subjects of our said lord the king, did on the——day of——in the——year of the reign of——with force and arms, at——afore said, in the county afore said, falsely, seditiously, and maliciously write and publish, and cause to be written and published, a certain false, seditious, and scandalous libel, intitled——In which said libel are contained, among other things, divers false, seditious, scandalous, and malicious matters, according to the tenor following, to wit,——And in another part of the same libel are contained divers other false, seditious, scandalous, and malicious matters, according to the tenor following——to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Linens cloth.

FOR the duties on linen cloth printed or stained; and for the marking or sealing of linen cloths, called cambricks and lawns; see title *Excise*.

For journeymen and other workmen imbezilling the materials of the linen manufacture, see title *Servants*.

1. Any person, native or foreigner, may without paying any thing, in any place, privileged or unprivileged, corporate or not corporate, set up and exercise the occupation of breaking, hickling, or dressing of hemp or flax; as also for making and whitening of thread; as also of spinning, weaving, making, whitening, or bleaching any cloth made of hemp or flax only; as also the mystery of making twine or nets for fishery, or of stoving of cordage; as also the trade of making tapestry hangings. 15 C. 2. c. 15. f. 2.

Who may set up trades in the linen manufactory.

And all foreigners that shall use any the trades aforesaid three years, shall (taking the oaths of allegiance and supremacy before two justices near unto their dwellings) enjoy all privileges as natural born subjects. f. 3.

2. Whereas certain evil disposed persons, by sundry devices, stretch linen cloth both in length and breadth, and then with battledores or otherwise beat the same, casting thereupon certain deceitful liquors mingled with chalk and other like things, whereby the cloth is made finer and thicker to the eye, but the threads are thereby loosened and made weak: If any person shall hereafter use the said deceits, or do any other act with any linen cloth whereby it shall be made worse, the said cloth shall be forfeited, and the offender punished by one month's imprisonment at the least, and pay such fine as the justices shall assess.

Deceitful making of linen cloth.

1 El. c. 12. f. 1.

And the judges of assize, and justices of the peace or three of them (1 Q.) may hear and determine the same in their sessions, by information, indictment, or upon the traverse of any presentment or indictment found before them. f. 2.

And if any person shall seize any such deceitful linen cloth, he shall at the next sessions, or before two justices (1 Q.) make due information of the offence and of the seizure, or else shall procure the offender to be indicted at the next sessions, and shall also be bound by recognizance or obligation to pursue the same with effect, and to give evidence, and to pay the moiety of what he shall recover, to the sheriff or other accountant to the use of the king. And the other half shall go to the informer or prosecutor. f. 3.

And the justices before whom the offence shall be tried, shall certify the same by estreat into the exchequer yearly at Michaelmas as they do other estreats, and thereupon the barons may make process for so much thereof as appertaineth to the king, in like manner as for other fines. f. 4.

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G

3. By

Destroying in the
working, or
stealing linen
cloth.

3. By the 18 G. 2. c. 27. Every person who shall, by day or night, feloniously steal any linen, fustian, calico, or cotton cloth; or cloth worked, woven, or made of any cotton or linen yarn mixed; or any thread, linen, or cotton yarn; linen or cotton tape, incle, filleting, laces, or any other linen, fustian, or cotton goods, laid to be printed, whitened, bowked, bleached, or dried, to the value of 10 s. or shall knowingly buy or receive any such wares stolen, shall be guilty of felony without benefit of clergy.

And by the 4 G. 3. c. 27. If any person shall, by day or night, break into any house, shop, cellar, vault, or other place or building, or by force enter into any house, shop, cellar, or vault, or other place or building, with intent to steal, cut, or destroy any linen yarn, or any linen cloth, or any manufacture of linen yarn belonging to any manufactory, or the looms, tools, or implements used therein; or shall wilfully or maliciously cut in pieces or destroy any such goods, when exposed either to bleach or dry; he shall be guilty of felony without benefit of clergy. *f. 16.*

Affixing coun-
terfeit stamps on
linen cloth.

4. If any person shall cause any stamps to be affixed to any foreign linens imported, in imitation of the stamps put on *Scotch or Irish* linens; he shall forfeit 5 l. for each piece: Or if any person shall expose or pack up for sale any foreign linens (knowing them to be so stamped) as the manufacture of *Scotland or Ireland*; he shall forfeit the same, and also 5 l. for each piece. And if any person shall affix any counterfeit stamp on any linen of the manufacture of *Great Britain or Ireland*, in order to vend the same as linens duly stamped; he shall forfeit 5 l. for each piece: And if any person shall expose or pack up for sale, any such linens, knowing them to be so stamped; he shall forfeit the same, and also 5 l. for each piece. *17 G. 2. c. 30. f. 1.*

And one justice may convict the offender on the oath of one witness, and may grant his warrant for distress and sale; and for want of sufficient distress, any justice, on proof thereof made on oath by the person executing the warrant, may commit him to gaol for six months, unless it be paid sooner: Which penalty shall go to the informer, deducting 2 s. in the pound to be paid to the constable who shall execute the warrant. *f. 2.*

Foreign cam-
bricks and lawns
prohibited.

5. By the 18 G. 2. c. 36. Cambricks and french lawns may be imported, on the importer's making oath, that they are for exportation only, and that they are really the property

perty of the importer or of some other subject, and that no foreigner hath any interest therein, and also giving bond for payment of 5 l. for each piece which shall not be exported within three years after entry. *f. 6.*

And by the 32 G. 2. c. 32. The same shall be imported for exportation only; and shall be lodged in such of the king's warehouses, as the commissioners of the customs shall appoint. *f. 3.*

But no person shall wear any cambrick or french lawn, on pain of 5 l. to the informer, on conviction by oath of one witness before one justice; who shall, on information on oath in six days after the offence committed, summon the party, and on his appearance or contempt proceed to examine the matter, and on due proof thereof made, either by confession, or oath of one witness, hear and determine the same, and cause the penalty to be levied by distress. The party aggrieved may appeal to the next sessions, giving six days notice. 18 G. 2. c. 36. *f. 1.*

And if any person shall sell or expose to sale any cambrick or french lawns, made or not made up (except for exportation); he shall forfeit 5 l. in like manner. 18 G. 2. c. 36. *f. 2.*

But if the wearer shall, on oath before a justice, discover the seller; he shall be discharged, and the seller only shall be liable. 18 G. 2. c. 36. *f. 3.* 21 G. 2. c. 26. *f. 2.*

And where such wearer shall be excused by discovering the vender, the penalty on the vender shall go to the person who informed against the wearer. 21 G. 2. c. 26. *f. 3.*

And any milliner or other person, who shall for hire make up any cambrick or french lawn for any wearing apparel, shall be liable to the penalties inflicted on the vender. 21 G. 2. c. 26. *f. 5.*

And where an offender is a feme covert, living with her husband, the penalty shall be levied on the goods of the husband. 21 G. 2. c. 26. *f. 4.*

And as a further discouragement to the wearing of these foreign manufactures, it is enacted by the 32 G. 2. c. 32. That if any person shall sell or expose to sale, or have in his custody or possession for that purpose, any cambricks or french lawns (other than in such warehouse where they shall be lodged on importation); the same shall be forfeited, and shall be liable to be searched for and seized as other uncustomed goods; and such person shall also forfeit 200 l. over and above all other penalties and forfeitures by any former act. *f. 5.*

Linen cloth.

And if any question shall arise with respect to the species or quality of the said goods seized by virtue of this act, or where the same were manufactured; the proof shall lie on the owner, and not on the prosecutor. *f. 6.*

And all the goods seized by virtue of this act, or any other cause of forfeiture, shall upon seizure thereof be carried to the next custom house, and after condemnation shall not be used in this kingdom, but shall be exported. *f. 7.*

And all penalties and forfeitures by this act shall be sued for in the courts at *Westminster*, in the name of the attorney general, or of some officer of the customs; and shall be half to the king, and half to such officer of the customs, who shall seize, inform, or prosecute for the same. *f. 8.*

Cambricks and
lawns made in
England.

6. By the 4 *G.* 3. c. 37. Cambricks and lawns, or linen goods known under those denominations, are allowed to be made and the same to be worn in *England*; and a corporation is established for the manufacturing thereof: The said goods to be stamped and marked according to the directions of the said act. To which purpose, it is enacted, that where there shall be any manufacture of such goods, the commissioners of excise shall appoint the supervisor or other officer to seal the same; for which they shall have such fee as the commissioners shall appoint. *f. 17, 18.*

And the manufacturer shall give notice in writing to the officer, of the finishing of every piece before it is taken out of the loom; who shall seal the same at both ends: on pain that such manufacturer taking the same out of the loom without having given such notice, and having the same sealed as aforesaid, shall forfeit 5*l.* and every such piece shall be forfeited, and may be seized by any officer of the customs or excise. *f. 19.*

The officer, with convenient speed, after notice, shall mark, and also number each piece; and make entry in writing in books to be provided at the expence of the manufacturer, of the number set to each piece, the length thereof, and the number of threads in the warp; on pain of 10*l.* *f. 20.*

And if the officer shall mark any not made in *England*, or after the same is taken out of the looms; he shall forfeit 50*l.* for each piece to him who shall sue, and forfeit his office, and be incapacitated to hold any other office of trust under the crown. *f. 21.*

If any person shall, by bribery or otherwise, prevail upon the officer to commit such offence, he shall forfeit 100*l.*

Linen cloth.

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100l. and stand in the pillory two hours; and if he shall offer any such bribe, he shall forfeit 50l. *f. 22.*

The officer shall yearly, in the month of *June*, transmit to the commissioners an account of all goods he shall have stamped, and a copy of the entries made; on pain of dismission. *f. 23.*

And the officer, or his executors, shall deliver up the seals, on demand from the commissioners; on pain of 200l. *f. 23.*

Cambricks and lawns made in *England*, found unstamped, shall be forfeited, and may be seized by any officer of the customs or excise; and, after condemnation, shall be sold: And every person who shall sell or expose to sale, or have in his custody for that purpose, any cambricks or lawns made in *England*, unmarked, shall forfeit 200l. *f. 24.*

Provided always, that the said goods so seized, condemned, and sold, shall not be worn in this kingdom, but exported, and not sold but upon condition of exportation; and not be delivered out of the warehouse, until bond be given, to the satisfaction of the collector, in double penalty of the goods, that the same shall be exported, and not relanded. *f. 25.*

If any person shall counterfeit the seal appointed by this act; or shall import any foreign cambricks or lawns, having such counterfeit mark thereon; or expose the same to sale, knowing the stamp thereon to be counterfeited; he shall be guilty of felony without benefit of clergy. *f. 26.*

All goods condemned in pursuance of this act, and all pecuniary forfeitures, (not herein otherwise directed,) shall be sued for and recovered in any of his majesty's courts of record at *Westminster*, in the name of the attorney general, or of such officer as aforesaid; and be applied (after all charges deducted) half to the use of the king, and half to the officer or other person who pursuant to the directions of this act shall seize, inform, or sue. *f. 28.*

And if any question shall arise, where the goods were manufactured, the proof shall lie on the owner or claimer, and not on the officer. *f. 31.*

Ling. Burning of it. See *Burning*.

London.

THERE are many acts of parliament relating to the city of *London* and other places within the bills of mortality, which being only local are not within the compass of this work ; and which would require a distinct volume of themselves. Sir *John Fielding*, in his “ Extract of “ the penal laws relating to the peace and good order of “ the city of *London*,” hath collected these partly, amongst other more general laws, for the instruction of ignorant offenders, and admonition of the unwary. It would be a work of further service to the metropolis, if some person would undertake a compleat collection and digest of all the laws relating to the cities of *London* and *Westminster*, and other places within the bills ; out of which might be selected again, such only as concern the office of a justice of the peace in particular.

Loom lace. See Buttons.

Lord's day.

Resorting to church on the lord's day.

1. **A**LL persons, not having reasonable excuse, shall resort to their parish church or chapel (or to some congregation of religious worship allowed by the toleration act) on every *sunday* ; on pain of punishment by the censures of the church, or of forfeiting 1s. to the poor for every offence. 1 *El. c. 2. s. 14. 24.* To be levied by the churchwardens by distress, by warrant of one justice. 3 *J. c. 4. s. 27, 28.*

Sports on the lord's day.

2. King *James* the first, in 1618, publicly declared to his subjects, in what was called the book of sports, these games following to be *lawful*, viz. dancing, archery, leaping, vaulting, maygames, whitson ales, and morris dances ; and did command that no such honest mirth or recreation should be forbidden to his subjects on *sundays* after evening service : But restraining all recusants from this liberty ; and commanding each parish to use these recreations by itself ; and prohibiting all *unlawful* games, bear baiting, bull baiting, interludes, and bowling by the meaner sort. *Dalt. c. 46.*

After which it was enacted by the statute of the 1 *C. c. 1.* that there shall be no concourse of people out of their own *parishes* on the lord's day, for any sports or pastimes ; nor any bear baiting, bull baiting, interludes, common plays,

or other unlawful exercises and pastimes used by any persons within their own parishes; on pain that every offender, being convicted within a month after the offence, before one justice, on view, or confession, or oath of one witness, shall forfeit for every offence, 3s. 4d. to the poor, to be levied by the constable and church-wardens by distress: In default of distress, the party to be set publickly in the stocks for three hours.

3. By the 1 J. c. 22. No shoemaker shall shew, to the intent to put to sale, any shoes, boots, buskins, startops, slippers, or pantofles, upon the *sunday*; on pain of 3s. 4d. a pair, and the value thereof: to be recovered at the assizes, sessions, or leet; one third to the king, one third to him who shall sue, and one third to the town or lord of the leet. *f. 28, 46, 50.*

Exercising
worldly callings
on the lord's
day.

And by the 3 C. c. 1. No carrier with any horse or horses, nor waggonmen with any waggon or waggons, nor carmen with any cart or carts, nor wainman with any wain or wains, nor drovers with any cattle, shall by themselves, or any other, travel on the lord's day, on pain of 20s. or if any butcher, by himself, or any other for him, with his privity and consent, shall kill or sell any victual on the lord's day, he shall forfeit 6s. 8d. The conviction to be in six months before one justice, or mayor, on view, or confession, or oath of two witnesses; to be levied by the constable or churchwarden, by distress; or to be recovered in any court of record, in any city or town corporate, before the justices in sessions; to be applied to the use of the poor, except that the justice may reward the informer or prosecutor with part of the forfeiture, not exceeding one third part.

And by the 29 C. 2. c. 7. it is further enacted, that no drover, horse courser, waggoner, butcher, higler, or any of their servants, shall travel, or come to his inn or lodging on the lord's day, on pain of 20s. and in general, that no tradesman, artificer, workman, labourer, or other person, shall do or exercise any worldly labour, business, or work of their ordinary callings on the lord's day; (except works of necessity and charity; and except dressing of meat in families, and dressing and selling of meat in inns, or cooks shops, or victualling houses, for such as cannot otherwise be provided; and by the 9 An. c. 23. *f. 20.* except licensed hackney coachmen and chairmen within the bills of mortality;) on pain of every offender above 14 years of age forfeiting 5s. and also that no person shall publickly cry, shew forth, or expose to sale, any wares, merchandizes, fruit, herbs, goods or chattels whatsoever, on the lord's day (except crying and

selling

Lord's day.

selling of milk, before nine in the morning and after four in the afternoon; and except mackarel, which may be sold on *sundays*, before or after divine service, by the 10 & 11 *W. c. 24. f. 14.*); on pain of forfeiting the same; And also that no person shall use, employ, or travel on the lord's day, with any *boat*, wherry, lighter, or barge (unless allowed by a justice of peace, on extraordinary occasion; and except 40 watermen who may ply on the *Thames* on *sundays* betwixt *Vauxhall* and *Limehouse*, by the 11 & 12 *W. c. 21. f. 13.*) on pain of 5 s. and if any person offending in any of the premises, shall be thereof convicted in ten days after the offence, before one justice, on view, or confession, or oath of one witness, the justice shall give warrant to the constables or churchwardens, to seize the goods cried, shewed forth, or put to sale, and to sell the same; and to levy the other forfeitures by distress; to the use of the poor, except that the justice may out of the same reward the informer with any sum not exceeding one third part. And for want of distress, the offender shall be set publickly in the stocks for two hours.

By the 2 *G. 3. c. 15. Fifth* carriages shall be allowed to pass on *sundays* and holidays, whether laden or returning empty. *f. 7.*

Serving process
on the lord's day.

4. No person upon the lord's day, shall serve or execute any writ, process, warrant, order, judgment, or decree (except in cases of treason, felony, or breach of the peace), but the service thereof shall be void; and the person serving the same shall be as liable to answer damages to the party grieved, as if he had done the same without any writ, process, warrant, order, judgment, or decree. 29 *C. 2. c. 7. f. 6.*

But this doth not extend to ecclesiastical process, as citations, or excommunications. *Gibf. 271.*

A justice issued a warrant to the constable, to make a person to find sureties for his *good behaviour*: the constable executed the warrant on a *sunday*, and he was justified by the court; who resolved, that a warrant for the good behaviour is a warrant for the *peace*, and more; and that this statute is to be favourably interpreted for the peace. *Raym. 250.*

Robbery on the
lord's day.

5. No hundred shall be answerable for any robbery on the lord's day: Nevertheless the inhabitants shall make hue and cry after the offenders, on pain of forfeiting to the king as much money as might have been recovered by the party robbed against the hundred, if he had been robbed on any other day. 29 *C. 2. c. 7. f. 5.*

Warrant

Warrant on the 3 C. c. 1. and 29 C. 2. c. 7. to levy 20s. on a carrier for travelling on the lord's day; which same will do, *mutatis mutandis*, for the other penalties under this title.

Westmorland. { To the constable of ——— in the said county, and to the churchwardens of the parish of ——— in the said county.

FORASMUCH as A. O. of ——— in the county of ——— carrier, is duly convicted before me J. P. esquire, one of his majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, for that he the said A. O. on the ——— day of ——— in the ——— year of the reign of ——— being the lord's day, commonly called Sunday, with his horses into and through the said parish of ——— did travel, contrary to the statutes in that case made and provided, whereby he hath forfeited the sum of 20s. of lawful money of England; these are therefore to command you forthwith to levy the said sum of 20s. by distraining the goods and chattels of him the said A. O. And if within the space of [five] days next after such distress by you taken, the said sum shall not be paid, together with the reasonable charges of taking and keeping the same, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the sum of 6s. 8d. part of the said sum of 20s. to A. I. of ——— yeoman, who informed me of the said offence, and that you see the remaining sum of 13s. 4d. employed to the use of the poor of your said parish of ——— returning to him the said A. O. the overplus upon demand, the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And you are to certify to me, with the return of this precept, what you shall have done in the execution thereof. Herein fail you not. Given under my hand and seal at ——— in the said county, the ——— day of ———.

Lotteries. See Gaming.

Low wines. See Excise.

Lowbells. See Game.

Luna-

Lunaticks.

Who.

1. **N**ON *compos mentis* is of four kinds ;
First, Idiots ; who are of *non sane memory* from their nativity, by a perpetual infirmity.

Secondly, Those that lose their memory and understanding by the visitation of God, as by sickness, or other accident.

Thirdly, Lunaticks; who have sometimes their understanding, and sometimes not.

Fourthly, Drunkards; who by their own vicious act for a time deprive themselves of their memory and understanding. 1 *Inst.* 247.

Inciting him to commit a crime.

2. He who incites a madman to do a murder, or other crime, is a principal offender, and as much punishable as if he had done it himself. 1 *Haw.* 2.

Not punishable for criminal offences.

3. But idiots and lunaticks, who are under a natural disability of distinguishing between good and evil, are not punishable by any criminal prosecution. 1 *Haw.* 2.

Yet drunkards shall have no privilege by their want of sound mind; but shall have the same judgment as if they were in their right senses. 1 *Inst.* 247. 1 *Haw.* 2. 1 *H. H.* 32.

Punishable for civil offences.

4. But if a person, who wants discretion, commit a trespass, against the person or possession of another; he shall be compelled in a civil action to give satisfaction for the damage. 1 *Haw.* 2.

Becoming non compos before trial.

5. If one who hath committed a capital offence become *non compos* before conviction, he shall not be arraigned; and if after conviction, he shall not be executed. *Hale's Pl.* 10. 1 *Haw.* 2.

How tried whether he is non compos.

6. By the common law, if it be doubtful whether a criminal, who at his trial in appearance is a lunatick, be such in truth or not, it shall be tried by an inquest of office, to be returned by the sheriff; and if it be found by them, that the party only feigns himself mad, and he still refuse to answer, he shall be dealt with as one that stands mute. 1 *Haw.* 2.

Whether he may bring an appeal. Whether he may be an approver.

7. An idiot cannot bring an appeal. 1 *Haw.* 162.
8. Neither can he be an approver; because he can neither take the oath in that case required, nor wage battle. 3 *Inst.* 129.

Friends restraining him.

9. Any person may justify confining and beating his friend being mad, in such manner as is proper in such circumstances. 1 *Haw.* 130.

10. By

10. By the 17 G. 2. c. 5. it is enacted, that whereas Overseers restraining him. there are sometimes persons, who by lunacy, or otherwise, are furiously mad, or are so far disordered in their senses, that they may be dangerous to be permitted to go abroad, it shall therefore be lawful for two or more justices where such lunatick or mad person shall be found, by warrant directed to the constables, churchwardens, and overseers of the place, or some of them, to cause such person to be apprehended, and kept safely locked up in some secure place, within the county or precinct, as such justices shall under their hands and seals direct and appoint, (and if such justices find it necessary) to be there chained, if the settlement of such person shall be within such county or precinct.

And if such settlement shall not be there, then such person shall be sent to his settlement by a vagrant pass (*mutatis mutandis*); and shall be locked up or chained by warrant of two justices of the county or precinct, to which such person is so sent, in manner aforesaid:

And the reasonable charges of removing, and of keeping, maintaining, and curing such person, during such restraint (which shall be during such time only as such lunacy or madness shall continue), shall be satisfied and paid (such charges being first proved upon oath) by order of two justices, directing the churchwardens or overseers, where any goods, chattels, lands or tenements of such person shall be, to seize and sell so much of the goods and chattels, or receive so much of the annual rents of the lands, as is necessary to pay the same; and to account for what is so seized, sold, or received, to the next quarter sessions: But if such person hath not an estate to satisfy the same, over and above what shall be sufficient to maintain his family, then such charges shall be paid by the parish, town, or place, to which such person belongs, by order of two justices, directed to the churchwardens or overseers for that purpose. *f. 20.*

Provided that any person aggrieved by any act of such justices out of sessions, may appeal to the next sessions, giving reasonable notice; whose order therein shall be final. *f. 28.*

But nothing herein shall restrain or abridge the power of the king, or lord chancellor; nor shall restrain or prevent any friend from taking them under their own care and protection. *f. 21.*

11. The king is the general guardian of idiots and lunatics. King the guardian of lunatics. 17 Ed. 2. *f. 1. c. 9, 10,*

Whether he may
avoid his own
act.

12. A person of *non sane* memory shall not avoid his own act, by reason of this defect; but his heir or executor may. 4 *Co. Beverly's* case.

Whether he may
consent to mar-
riage.

13. If an idiot takes a wife, they are husband and wife in law, and their issue legitimate; for he is allowed to be capable of consenting to marriage. 1 *Sid.* 112.

But by the 15 *G. 2. c. 30.* Lunaticks found so by inquisition by commission under the great seal; or any lunatick or person under a phrenzy, whose person and estate is vested in trustees by act of parliament, if they marry before they are declared of sound mind by the lord chancellor, or the trustees or major part of them respectively, every such marriage shall be void.

In what case he
may make a sur-
render.

14. A lunatick may surrender a lease in the court of chancery or exchequer, in order to renew the same. 29 *G. 2. c. 31.*

Whether he may
make a will.

15. To make a will, it is not sufficient that the testator have memory to answer to familiar and usual questions, but he ought to have a disposing memory, so as to be able to make a disposition of his estate, with understanding and reason. 6 *Co.* 23.

Lurcher. See *Game.*

Lutestrings. See *Silks.*

Madder.

IF any person shall steal and take away, or wilfully and maliciously pull up or destroy any madder roots; and shall be convicted thereof before one justice, by confession or oath of one witness; he shall, for the first offence, pay to the owner such satisfaction for damages and in such time as the justice shall appoint, and moreover shall pay down upon the conviction to the overseer for the use of the poor such sum not exceeding 10s. as to the justice shall seem meet; and if he shall not make such recompence, and also pay such sum to the use of the poor, the said justice shall commit him to the house of correction for any space not exceeding one month, or may order him to be whipped by the constable or other officer, as to the said justice shall seem meet: and for the second offence, shall by such justice

justice be committed to the house of correction for three months. Prosecution to be commenced within thirty days. 31 G. 2. c. 35. s. 5, 6.

Madmen. See Lunaticks.

Maim.

1. **M**AIM is such a hurt of any part of a man's body, whereby he is rendered less able in fighting, either to defend himself, or annoy his adversary. 1 Haw. 111.

2. For the members of every subject are under the safeguard and protection of the law, to the end a man may serve his king and country, when occasion shall be offered: and therefore a person who maims himself, that he may have the more colour to beg, may be indicted and fined. 1 Inst. 127.

And by the like reason, a person who disables himself, that he may not be impressed for a soldier.

3. The cutting off, or disabling, or weakening a man's hand or finger, or striking out his eye, or foretooth, or castrating him, are said to be maims, but the cutting off his ear, or nose, were not esteemed maims at the common law, because they do not weaken but only disfigure him. 1 Haw. 111, 112.

4. It is said, that anciently castration was punished with death; and other maims with the loss of member for member: but afterwards no maim was punished in any case with the loss of life or member, but only with fine and imprisonment. 1 Haw. 112.

But now by the 22 & 23 C. 2. c. 1. (which is called the *Coventry* act, because it was made on the occasion of Sir *John Coventry's* being assaulted in the street, and his nose slit) If any person, on purpose, and of malice forethought, and by lying in wait, shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject, with intention in so doing to maim or disfigure him; the person so offending, his counsellors, aiders, and abettors (knowing of and privy to the offence) shall be guilty of felony without benefit of clergy; but not to work corruption of blood.

5. If

Maim.

5. If a man attack another with intent to murder him, and he does not murder, but only maim him; the offence is nevertheless within this statute. 1 *Haw.* 112.

6. If the maim comes not within any of the descriptions in the act, yet it is indictable at the common law, and may be punished by fine and imprisonment: Or an appeal may be brought for it at the common law; in which the party injured shall recover his damages: Or he may bring an action of trespass; which kind of action hath now generally succeeded into the place of appeals in smaller offences not capital. 2 *Haw.* 157—160.

7. It doth not seem, that in maiming there may be accessories after the fact. 2 *Haw.* 311.

For maiming of cattle, see title *Cattle*.

Mainprize. See *Bail*.

Maintenance.

BUYING of titles belongeth not to this place, but is treated of under a title of its own.

- I. Of maintenance in general.
- II. Of champerty in particular.
- III. Of embracery in particular.

I. Of maintenance in general.

Concerning which I will shew,

- i. *What it is.*
- ii. *How punishable by the common law.*
- iii. *How by statute.*

i. *What it is.*

1. Maintenance (*manu tenere*) is an unlawful taking in hand or upholding of quarrels or sides, to the disturbance or hindrance of common right. 1 *Haw.* 249.

2. And it is twofold:

One

Maintenance.

III

One in the *country*; as where one assists another in his pretensions to certain lands, by taking or holding the possession of them for him by force or subtilty; or where one stirs up quarrels, and suits in the country, in relation to matters wherein he is no way concerned: And this kind of maintenance is punishable at the king's suit by fine and imprisonment, whether the matter in dispute any way depended in plea or not; but it is said not to be actionable. 1 *Haw.* 249.

Another in the *courts of justice*; where one officiously intermeddles in a suit depending in any such court, which no way belongs to him, by assisting either party with money or otherwise, in the prosecution or defence of any such suit. 1 *Haw.* 249.

3. Of this second kind of maintenance, there are three species;

First, where one maintains another, without any contract to have part of the thing in suit; which generally goes under the common name of *maintenance*.

Secondly, where one maintains one side, to have part of the thing in suit; which is called *champerty*.

Thirdly, where one laboureth a jury; which is called *embracery*. 1 *Haw.* 249.

4. But it seemeth to be agreed, that wherever any persons claim a common interest in the same thing, as in a way, churchyard, or common, by the same title, they may maintain one another in a suit relating to the same. 1 *Haw.* 252.

5. Also, that whoever is any way of kin or affinity to the party, may counsel and assist him, but that he cannot justify the laying out any of own his money in the cause unless he be either father, or son, or heir apparent. 1 *Haw.* 252.

6. Also, that any one in charity may lawfully give money to a poor man, to enable him to carry on his suit. 1 *Haw.* 253.

ii. How punishable by the common law.

It seemeth that all maintenance is not only *malum prohibitum* by statute, but is also *malum in se*, and strictly prohibited by the common law, as having a manifest tendency to oppression; and therefore it is said, that all offenders of this kind are not only liable to an action of maintenance at the suit of the party grieved, wherein they shall render such damages as shall be answerable to the injury done to the

the plaintiff, but also that they may be indicted as offenders against publick justice, and adjudged thereupon to such fine and imprisonment as shall be agreeable to the circumstances of the offence. Also it seemeth, that a court of record may commit a man for an act of maintenance done in the face of the court. 2 *Inst.* 212. 1 *Haw.* 255.

iii. *How by statute.*

1. By the 1 Ed. 3. st. 2. c. 14. *No person shall take upon him to maintain quarrels, nor parties in the country, to the disturbance of the common law.*

2. And by the 20 Ed. 3. c. 4. *None shall take in hand quarrels other than their own, nor the same maintain, by them nor by other, for gift promise, amity, favour, doubt, fear, nor other cause, in disturbance of law, and hindrance of right.*

3. And by the 1 R. 2. c. 4. *None shall take or sustain any quarrel by maintenance in the country, on pain, if he is a great officer, as the king by advice of the lords shall ordain; if he is a lesser officer, he shall forfeit his office, and be imprisoned and ransomed at the king's will; and all other persons, on pain of imprisonment, and ransom at the king's will.*

4. And by the 32 H. 8. c. 9. *No person shall unlawfully maintain, or procure any unlawful maintenance, in any action, demand, or complaint, in any court having power to hold plea of lands; nor shall unlawfully retain any person for maintenance of any plea, to the disturbance or hindrance of justice; on pain of 10 l. half to the king, and half to him that shall sue within one year. i. 3, 6.*

Unlawfully maintain] It seemeth that in an information on this statute, it is not sufficient to say, that the defendant maintained the party, without adding that he did it unlawfully. 1 *Haw.* 256.

Having power to hold plea of lands] It is said to have been adjudged, that maintenance of a suit in a spiritual court, is neither within this nor any other statute concerning maintenance. 1 *Haw.* 256.

To hold plea] It hath been holden that in an information on this statute, it is necessary to shew, that a plea was depending; and therefore that it is not sufficient to say that a bill was exhibited. 1 *Haw.* 256.

II. Of champerty in particular.

i. *What it is.*

ii. *How punishable by the common law.*

iii. *How by statute.*

i. *What it is.*

Champerty (from *campi parte*) is the unlawful maintenance of a suit, in consideration of some bargain to have part of the lands or thing in dispute, or part of the gains. 1 Haw. 256. 33 Ed. 1. ft. 2.

Every champerty is maintenance, but every maintenance is not champerty; for champerty is but a species of maintenance which is the genus. 2 Inst. 208.

ii. *How punishable by the common law.*

Champerty was an offence at the common law, and as such is punishable in like manner as hath been expressed in treating of maintenance in general. 2 Inst. 208.

iii. *How by statute.*

1. By the 3 Ed. 1. c. 25. *No officer of the king, by himself, nor by other, shall maintain pleas, suits, or other matters hanging in the king's courts, for lands, tenements, or other things for to have part or profit thereof, by covenant made between them; and he that doth shall be punished at the king's pleasure.*

By covenant made] That is, by agreement either by word or writing; for albeit in the common sense, a covenant is taken for an agreement by writing, yet in a larger sense it is taken (as it is here) for an agreement by writing or by word. 2 Inst. 209.

2. And by the 28 Ed. 1. c. 11. *No person whatsoever, for to have part of the thing in plea, shall take upon him the business that is in suit, nor shall any upon such covenant give up his right to another; on pain that the taker shall forfeit to the king the value of the part he hath purchased for such maintenance. But no person shall be prohibited hereby to have counsel of pleaders, or of men learned in the law, for their fee; or of his parents and next friends.*

Maintenance.

3. And by the 33 Ed. 1. ft. 3. *Any person who shall take for maintenance, or the like bargain, any suit or plea against another; he, and also they who consent thereunto, shall be imprisoned three years, and make fine at the king's pleasure.*

4. And by the 1 R. 2. c. 9. *A feoffment of lands, or gift of goods, for maintenance, shall be void, and the person disseised shall recover the lands against the first disseisors, with double damages, without having any regard to such alienations.*

Shall be void] But it is said that it shall only be void with regard to him that hath right, and not between the feoffor and feoffee. 1 *Inst.* 369.

5. And by the 31 El. c. 5. *The offence of champerty may be laid in any county, at the pleasure of the informer. l. 4.*

III. Of embracery in particular.

i. *What it is.*

ii. *How punishable by the common law.*

iii. *How by statute.*

i. *What it is.*

1. It seems clear, that any attempt whatsoever to corrupt, or influence, or instruct a jury, or any way to incline them to be more favourable to the one side than to the other, by money, promises, letters, threats, or persuasions, is a proper act of embracery, whether the juror on whom such attempt is made give any verdict or not, or whether the verdict given be true or false. 1 *Haw.* 259.

2. And the law so far abhors all corruption of this kind, that it prohibits every thing which has the least tendency to it, what specious pretence soever it may be covered with, and therefore it will not suffer a mere stranger so much as to labour a juror to appear and act according to his conscience. 1 *Haw.* 259.

3. But any person who may justify any other act of maintenance, may safely labour a juror to appear and give a verdict according to his conscience; but no one whatsoever can justify the labouring a juror not to appear. 1 *Haw.* 260.

ii. *How punishable by the common law.*

There is no doubt, but that offences of this kind, do subject the offender either to an indictment or action, in the same

Maintenance.

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same manner as all other kinds of unlawful maintenance do by the common law. 1 *Haw.* 260.

iii. How by statute.

1. By the 32 H. 8. c. 9. No person shall embrace any jurors on pain of 10 l. half to the king, and half to him that shall sue within a year. s. 3, 6.

2. And by the 38 Ed. 3. st. 1. c. 12. If any juror shall take any thing to give his verdict; both he, and the embracer, shall forfeit ten times as much, half to the king, and half to him that shall sue.

Upon which statute is founded the writ of *Decies tantum*.

Indictment for maintenance.

THE jurors for our lord the king upon their oath present, that A. O. late of — in the county aforesaid, yeoman, on the — day of — in the — year of the reign of — with force and arms at — aforesaid, in the county aforesaid, did unjustly and unlawfully maintain and uphold a certain suit, which was then depending in the court of our said lord the king, before the king himself, between A. P. plaintiff, and A. D. defendant in a plea of debt, on the behalf of the said A. P. against the said A. D. contrary to the form of the statute in such case made and provided, and to the manifest hindrance and disturbance of justice, and in contempt of our said lord the king, and to the great damage of the said A. D. and against the peace of our said lord the king, his crown and dignity.

Malt. See *Excise*.

Manlaughter. See *Homicide*.

Mariners. See *Seaman*.

Marriage.

BY the 26 G. 2. c. 33. If any person shall solemnize matrimony, in any other place than a church or publick chapel (unless by special licence from the archbishop

Marriage.

of *Canterbury*;) or without publication of bans, or licence, in a church or chapel; he shall (on prosecution in 3 years) be adjudged guilty of felony, and transported for 14 years; and the marriage shall be void. *f.* 8, 9. But not to extend to *Scotland*, nor to the marriages of quakers, or jews. *f.* 17, 18.

And if any person shall knowingly and wilfully insert, or cause to be inserted, in the register book, any false entry of any matter or thing relating to any marriage; or falsly make, alter, forge, or counterfeit, any such entry in the register, or any marriage licence, or cause the same to be done, or assent thereunto, or utter as true any such falsified register, or copy thereof, or any such forged licence; he shall be guilty of felony without benefit of clergy. *f.* 16.

For other matters relating to this title, see *Women* and *Polygamy*.

Master. See *Servant, Apprentice*.

Measures. See *Weights*.

Metal. See *Pewter*.

Metheglin. See *Excise*.

Militia.

BY the 2 G. 3. c. 20. which is in force for seven years, &c. all former acts relating to the raising of the militia shall be repealed, except in such cases as are therein specially directed to be subject to the provisions of the said former acts or any of them. *f.* 144.

Which special directions relate only to certain particular places therein mentioned, and not to the militia within any of the counties at large: so that as to the general forming and regulating of the militia throughout the kingdom, the old militia acts seem to stand at present wholly repealed, and are only in force in some respects (as will appear) with regard to the city of *London*, the tower hamlets, and the cinque ports. Nevertheless as the militia within these places specified doth make up a most considerable and necessary part of the whole militia of the kingdom; and as the said statute of the 2 G. 3. c. 20. is but temporary, it is judged requisite to insert first of all the ancient militia laws

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laws as they stood before, and then to insert the new militia laws as they stand upon this present act, and other acts consequent thereupon.

(Old) Militia.

- I. Of the appointing lieutenants and deputy lieutenants.*
 - II. Constituting inferior officers.*
 - III. Persons chargeable to find soldiers.*
 - IV. Inlisting.*
 - V. Mustering, training, and leading.*
 - VI. Trophy money; for ammunition, carriages, and other necessaries.*
 - VII. Power to search for arms.*
 - VIII. Constables to be assisting.*
 - IX. Punishment for desertion or disobedience.*
 - X. Punishment for imbezilling horse or furniture.*
 - XI. Officers pay.*
 - XII. Soldiers pay.*
 - XIII. Penalties how recoverable.*
 - XIV. Double costs.*
- I. Of the appointing lieutenants and deputy lieutenants.*

The king may issue commissions to such persons as he shall think fit, to be lieutenants for the several counties, cities, and places. 13 & 14 C. 2. c. 3. s. 2.

Which lieutenants shall present to his majesty the names of such persons as they shall think fit, to be deputy lieutenants; and upon his majesty's approbation of them, shall give them deputations accordingly: always understood, that the king have power to direct and order otherwise; and accordingly at his pleasure may appoint and commissionate, or displace such officers. *id.*

And the said deputy lieutenants shall obey such orders as they shall receive from the lieutenants. *id. s. 13.*

But no peer shall be capable of acting as lieutenant or deputy lieutenant, unless he shall first before six of the privy council, or such others as shall be authorized by the king, take the oaths of allegiance and supremacy, and this oath following; *I A. B. do declare and believe, that it is not lawful upon any pretence whatsoever, to take arms against the king; and that I do abhor that traitorous position, that arms may be taken by his authority against his person, or against those that are commissioned by him in pursuance of such military commission: So help me god.* *id. f. 18.*

And no person under the degree of a peer, shall be capable of acting as lieutenant or deputy lieutenant, unless he shall first take the said oaths; which oaths, any one justice, of the county or place, may administer to such lieutenant as is not a peer; and the said lieutenant, or any one such justice, may administer the same to the deputy lieutenants not being peers. *id. f. 19.*

II. Constituting inferior officers.

The lieutenants may give commissions to such persons as they shall think fit to be colonels, majors, captains, and other commission officers, *13 & 14 C. 2. c. 3. f. 2.*

Which officers likewise, before they shall be capable of acting, shall first take the said oaths; to be administered by the lieutenants, and in their absence, or by their directions, the deputy lieutenants, or any two of them. *id. f. 19.*

III. Persons chargeable to find soldiers.

Who chargeable
with horse.

1. The lieutenants and deputies, or the major part of them then present, or in the absence of the lieutenant, the major part of the deputy lieutenants then present, which major part shall be three at least, shall have power to charge any person, in the county, city, or town corporate, where his estate lies, having respect unto, and not exceeding the following proportions; *viz.*

No person shall be charged with finding a horse, horseman, and arms, unless he have a revenue of 500l. a year in possession, or an estate of 6000l. in goods or money, besides the furniture of his house; and so proportionably for a greater estate, as they shall see cause, and think reasonable. *13 & 14 C. 2. c. 3. f. 3.*

Who chargeable
with foot.

2. And they shall not charge any person with finding a foot soldier and arms, that hath not a yearly revenue of 50 l. in possession, or a personal estate of 600 l. in goods
or

or money, other than stock upon the ground; and after the said rate proportionably for a greater or lesser revenue or estate. *id.*

But they may require the constables to furnish, at a reasonable time and place to be appointed, on a penalty not exceeding 40 s. so many sufficient arms, with wages and other incident charges, as they shall assess according to the said proportions, upon revenue under 50l. a year, or on personal estates less than 600l. And in order thereunto, if any person shall on demand refuse or neglect to provide a foot soldier or soldiers according to the proportions aforesaid, or to pay any sums of money whereat he shall be assessed by a pound rate (according to a list signed by the lieutenants and deputies or three of them) towards defraying the necessary charge in providing such arms as aforesaid, the constable by warrant may levy such sum by distress and sale, rendering the overplus, charge of distraining being first deducted: and the tenant shall pay the same, and deduct it out of his next rent; and in default thereof, his goods also shall be liable to be distrained and sold. 15 C. 2. c. 4. f. 4, 5.

But no person having an estate of 200l. a year, or personal estate of 2400l. shall be charged with finding any foot. 15 C. 2. c. 4. f. 18.

3. And they may charge any person having an estate of 100l. a year, and under 200l. or who hath a personal estate of 1200l. and under 2400l. towards the finding of foot or horse, as to them shall seem most expedient. 15 C. 2. c. 4. f. 18. Who may be charged either with horse or foot.

4. But they shall not charge any person with finding both horse and foot in the same county. 13 & 14 C. 2. c. 3. f. 3. None chargeable with both horse and foot.

5. And they may impose the finding of horse, horseman, and arms; by joining two, three, or more persons together in the charge. 13 & 14 C. 2. c. 3. f. 4. Two or more may be charged together.

But no person not having 100l. a year in possession in lands, leasehold or copyhold, or 1200l. personal estate, shall be compellable to contribute in finding any horse and horseman. *id.* f. 5.

6. And no person chargeable to find a horse and horseman, or to be contributory thereunto, shall for the same estate be chargeable towards finding a foot soldier with arms, or contributory thereunto. 13 & 14 C. 2. c. 3. f. 4. Person chargeable with horse, not to be charged with foot.

7. Where two or more are charged to find any horse or foot soldier and arms, three deputy lieutenants may appoint who shall find the same, and who shall be the

Who shall find and who contribute.

contributors, and settle the sums to be paid by every contributor, in case the same contribution be not ascertained by agreement of the parties. 10 & 11 W. c. 12. f. 3.

Persons may be examined on oath.

8. And for the better discovery of the ability of the persons so to be assessed and charged, and of all misdemeanors tending to the hindrance of the service, they may examine on oath such persons as they shall judge necessary or convenient, or shall be produced by the party charged or accused, other than the persons themselves to be assessed or accused. 13 & 13 C. 2. c. 3. f. 11.

Hearing and determining complaints.

9. And they may hear complaints, and give redress, according to the merits of the cause. 13 & 14 C. 2. c. 3. f. 5.

Peers how to be charged.

10. No peer shall be charged otherwise than as follows; viz. the king may issue out commissions under the great seal, to so many peers (not fewer than 12) as he shall think fit; who, or any 5 of them, shall have power to assess all or any peers, according to the proportions herein mentioned (except the monthly taxes hereafter following) and to execute all the powers of this act, as well for laying assessments, as imposing of penalties (imprisonment only excepted). Which assessment or charge so made, and penalties imposed, shall be certified to the lieutenants. And in case of default in performance of any thing to be done or paid by any peer, the lieutenants and deputies, or any three of them, may cause distresses to be taken in the lands of such defaulter; and if satisfaction shall not be made in one week after such distress taken, then the same to be sold: and if a tenant be distrained, he may deduct the sum levied out of his next rent. 13 & 14 C. 2. c. 3. f. 33.

Officer how chargeable.

11. Every commissioned foot officer shall be exempted from finding, or contributing to find, any horse or foot soldier, for his whole estate, if it is but charged with one horse, or a less charge, or for such part of his estate as is charged with one horse, if his whole estate be charged with a greater charge than one horse in the county or lieutenancy where he so serves as a foot officer, in respect of the expence which the said employment doth necessarily engage him in. 15 C. 2. c. 4. f. 9.

Papists how to be charged.

12. Where any papist, reputed papist, or other person refusing to take the oaths, is chargeable in respect of his estate, the lieutenant, or in his absence the deputies, or three of them, may appoint such person as they shall think most meet, to furnish the same; and may charge the same estate with the payment of the yearly sum of 8 l. for a h rse

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horse, horseman, and arms, and of 30 s. for a foot soldier and arms. And if he shall not pay the same on demand, they may by their warrant levy the same by distress and sale of the goods of such person, or of his tenants, rendering the overplus, all necessary charges in levying thereof being first deducted; and such tenant shall deduct the same out of his rent. 10 & 11 W. c. 12. f. 2.

13. Where any person shall be charged in the county, city, or place, where he doth not reside, they shall send notice of the charge, if he have any land in his own occupation, to such person as he employs as his servant in managing the same; and if all his estate be let to farm, then to one or two of the most sufficient tenants; who shall forthwith, with all convenient speed, convey the same to their master or landlord; and in such time as shall be appointed, bring an account of his answer: And on neglect or refusal of the landlord, to provide such horse or foot, as is duly charged upon him, for the yearly rent reserved upon every demise or other grant, and not otherwise, within the time limited; then the tenant shall provide and do, as the landlord in that behalf ought to have done: And if the tenant shall refuse or neglect, within the time limited, the lieutenants, and in their absence, or by their directions, the deputies, or two of them, may levy by their warrant all such penalties as are appointed by this act, by distress and sale of the offender's goods. 13 & 14 C. 2. c. 3. f. 16.

Persons residing out of the liberty, how to be charged.

And the tenant may defalk out of his next rent, all such money as he shall necessarily lay out in providing the same, or shall be levied upon him by distress for any default; unless the landlord shall make it appear in two months after such levying, before the lieutenant, or in his absence, or by his direction, the deputies, or any two of them, that the default and penalty was occasioned by the tenant's wilful neglect. *id.* f. 17.

But this shall not avoid any covenant between landlord and tenant, concerning the finding horses or arms, or the bearing of any charges by any tenant; but all charges shall be born by such tenant, according to the agreement. *id.* f. 29.

14. If any person shall refuse or neglect, by a reasonable time to be appointed, to provide such horse, horseman, arms and other furniture, or to pay such sum towards providing the same as afore said; the lieutenants and deputies, or three of them, may inflict a penalty on such person not exceeding 20 l. and by their warrant may levy

Penalty on persons not furnishing.

(Old) Militia.

levy such sum, or the value of such horse, arms, and furniture, and such penalty inflicted, by distress and sale, rendring the overplus, all necessary charge in levying thereof being first deducted; the same to be employed to the uses in default whereof the same was imposed. 13 & 14 C. 2. c. 3. f. 9.

And if any person shall refuse or neglect, by a reasonable time to be appointed, to provide and furnish such foot soldier and arms as shall be charged upon him; the lieutenants and deputies, or three of them, may inflict a penalty not exceeding 5 l. to be employed to the uses in default whereof it was imposed: And the constable, by warrant for that purpose, may levy such sum by distress and sale, rendering the overplus, charges of distraining being first deducted; and the tenant shall pay the same, and deduct it out of his next rent, and in default thereof his goods also shall be liable to be distrained and sold. 15 C. 2. c. 4. f. 3, 5.

And if any person charged as a contributor, being an inhabitant, shall refuse to pay his proportion on demand; or if he be not an inhabitant, if his tenant shall not pay the same upon demand; three deputy lieutenants by their warrant may levy the same by distress and sale, rendring the overplus, all necessary charge in levying thereof being first deducted; and such tenant may deduct the same out of his rent. 10 & 11 W. c. 12. f. 3.

None compellable to serve in person.

15. But no person charged with the finding horse or foot, or with contributing thereunto; shall be compellable to serve in person, but may find one to serve for him, to be approved by the captain; subject nevertheless to be altered upon appeal to the lieutenant, or in his absence to two deputy lieutenants. 13 & 14 C. 2. c. 3. f. 25.

IV. Inlisting.

Every man who shall serve in his own person, or such person as shall be accepted in his stead, shall at the next muster of his troop or company, give in his name and place of abode, unto such person as the lieutenant, or in his absence, or by his direction, any two deputy lieutenants, shall appoint; to the end that the same may be listed. 13 & 14 C. 2. c. 3. f. 25.

But he shall not be capable of acting as a soldier, unless he first take the said oaths abovementioned, to be administered by the lieutenant, or in his absence, or by his direction, the deputy lieutenants, or any two of them. *id.* f. 19.

V. Mustering, training, and leading.

1. By the 13 & 14 C. 2. c. 3. The lieutenants shall have power to call together the militia, and to arm and array them, and form them into companies, troops, and regiments, and in case of insurrection, rebellion, or invasion, them to lead, conduct, and employ, or cause them to be led, conducted, and employed, as well within the several counties, cities, and places for which they shall be commissioned respectively, as also into any other counties and places, for the suppressing of all such insurrections and rebellions, and repelling of invasions, as may happen to be, according as they shall receive directions from his majesty. *f. 2.*

And by the 15 C. 2. c. 4. The lieutenants, and in their absence, or by their directions, the deputy lieutenants, or two of them, shall have power to lead, train, and exercise, or by warrant under their hands and seals, cause to be led, trained, and exercised, the persons so raised, arrayed, and weaponed. *f. 1.*

But nothing herein shall extend to the giving any power for marching any subjects out of the realm, otherwise than by the laws of *England* ought to be done. 13 & 14 C. 2. c. 3. *f. 32.*

2. The ordinary times for training, exercising, and mustering, shall be these: The general muster and exercise of regiments, not above once a year; The training and exercising of single companies, not above four times a year, unless special directions be given by the king or his privy council; And such single companies and troops shall not at any one time be continued in exercise above the space of two days; And at a general muster and exercise of regiments, no officer or soldier shall be constrained to stay above four days together from their habitations. *id. f. 21.*

3. At every such muster and exercise, every musqueteer shall bring with him half a pound of powder, and half a pound of bullets; and every musqueteer that shall serve with a match lock, shall bring with him three yards of match; and every horseman shall bring with him a quarter of a pound of powder, and a quarter of a pound of bullets; all which shall be at the charge of him who provides the said soldier and arms: on pain of 5s. for every omission. 13 & 14 C. 2. c. 3. *f. 21.* 15 C. 2. c. 4. *f. 7.*

And

And the arms offensive and defensive, with the furniture for horse, shall be as follows; the defensive arms, a back, breast, and pot, pistol proof; the offensive arms, a sword and a case of pistols, the barrels not under 14 inches in length; the furniture for the horse, a great saddle or pad with burrs and straps to affix the holsters unto, a bit and bridle, with a pectoral and crupper: for the foot, a musqueteer shall have a musket, the barrel not under three foot in length, and the gauge of the bore to be for 12 bullets to the pound, a collar of bandileers, with a sword: a pikeman to be armed with a pike of ash, not under 16 foot in length (head and foot included) with a back, breast, head-piece, and sword. 13 & 14 C. 2. c. 3. s. 21.

Muster master.

4. The muster master shall be an inhabitant of the county. 15 C. 2. c. 4. s. 6.

And once a year each soldier shall pay to him such sum, not exceeding 1s. for a horseman, and 6d. for a footman, as the lieutenants and deputies, or three of them, shall under their hands and seals direct; who shall have power to levy the same, by distress and sale of the goods of the persons charged to find such horseman, or foot soldier, unless the default be by the neglect of such soldier, who in that case shall be accountable for the same. *id.*

Penalty on not furnishing.

5. If any person charged shall refuse or neglect to send in, or deliver his horse, arms, or other furniture, at the beat of drum, sound of trumpet, or other summons; the lieutenants and deputies, or three of them, may inflict a penalty not exceeding 5l. to be levied by distress and sale, rendering the overplus, necessary charges for levying being first deducted. 13 & 14 C. 2. c. 3. s. 10.

Exception as to corporations.

6. Provided, that no officer or soldier of the militia, belonging to any city, borough, or town corporate, being a county of it self, or to any other corporation or port town, who have used to be mustered only within their own precincts, shall be compellable to appear out of such precincts, at any muster or exercise only. 13 & 14 C. 2. c. 3. s. 28.

VI. Trophy money; for ammunition, carriages, and other necessaries.

And for furnishing ammunition and other necessaries, the lieutenants and deputies, or three of them, shall have power to lay rates on the respective counties and places, not exceeding in the whole in any one year the proportion of a fourth part of one month's assessment in each county, after the rate of 70000l. a month, charged by the act of the

(Old) Militia.

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the 12 C. 2. c. 29. Which shall be assessed, collected, and paid by such persons, and according to such directions as shall be given by the lieutenants and deputies, or three of them; under the like penalties, and by the like ways and means, as are prescribed in the said act. 13 & 14 C. 2. c. 3. s. 7.

Which said act of the 12 C. 2. c. 29. directs the sum of 70000l. a month to be raised in the like manner as by the act of the 12 C. 2. c. 21. which act did direct the same to be raised, according to the proportions, and in such manner as by an ordinance of both houses made in his majesty's absence: Which ordinance was as followeth;

That is to say, there shall be raised an assessment of 70000l. a month, in these proportions,

On the county of

	l.	s.	d.		l.	s.	d.
Bedford —	933	6	8	Town —	30	2	4
Berks —	1088	17	10	Norfolk —	3624	8	10
Buckingham	1283	6	8	Norwich —	186	13	4
Cambridge	1102	10	0	Northumberland	179	19	10
Isle of Ely	367	10	0	Newcastle —	35	11	8
Chester county	770	0	0	Oxon —	1127	15	6
City —	85	11	2	City —	107	6	8
Cornwall —	1633	6	8	Rutland —	272	4	6
Cumberland	108	0	0	Salop —	1322	4	4
Derby —	933	6	8	Stafford —	919	6	8
Devon —	3003	15	6	Litchfield —	14	0	0
Dorset —	1311	10	6	Somerset —	2722	4	6
Town of Pool	10	14	0	Bristol —	171	2	2
Durham —	153	14	4	Southampton	2022	4	4
Essex —	3500	0	0	Suffolk —	3655	11	2
Gloucester —	1626	6	8	Surrey —	1565	5	6
City —	162	11	2	Southwark	184	14	6
Hereford —	1166	13	4	Sussex —	1905	11	2
Hertford —	1400	0	0	Warwick —	1244	8	10
Huntingdon —	622	4	6	Westmorland —	73	19	4
Kent —	3655	11	2	Wilts —	1944	8	10
Lancaster —	933	6	8	Worcester —	1182	4	4
Leicester —	1088	17	8	City —	62	4	6
Lincoln —	2722	4	10	York —	3043	8	10
Middlesex —	1788	17	10	Kingston —	67	13	4
London —	4666	13	4	Anglesea —	135	14	4
Northampton	1400	0	0	Brecknock —	361	13	4
Nottingham —	903	4	4	Cardigan —	213	10	0
				Carmarthen			

(Old) Militia:

	<i>l.</i>	<i>s.</i>	<i>d.</i>		<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Carmarthen</i> -	352	6	8	<i>Monmouth</i> -	466	13	4
<i>Carnarvan</i> -	202	4	4	<i>Montgomery</i> -	295	11	0
<i>Denbigh</i> —	272	4	6	<i>Pembroke</i> —	406	0	0
<i>Flint</i> —	135	14	6	<i>Radnor</i> —	254	6	8
<i>Glamorgan</i> —	458	17	8	<i>Haverford West</i>	14	11	8
<i>Merioneth</i> -	124	8	10	<i>Berwick</i> -	5	16	8

And the commissioners shall cause the proportions to be equally assessed; and appoint assessors in each parish, who shall assess the same by a pound rate, according to all estates both real and personal, within the limits of their parishes.

And in case the way of assessing by a pound rate shall prove obstructive to the speedy bringing in of the assessment; the commissioners may direct the assessors to assess the same, according to the most just and usual way of rates practised in such places. Provided that the apportionment of the assessment shall not be drawn into precedent.

And no privileged place shall be exempted from the assessment.

But nothing contained in this ordinance shall charge any master, fellow, or scholar of any college in either of the universities, or of *Winchester*, *Eaton*, or *Westminster*, or in any other free schools, or any reader, officer, or minister of the same, or of any hospitals, or almshouses, in respect of any profit arising in respect of the said places; nor charge any houses or lands belonging to *Christ's hospital*, *Bartholomew*, *Bridewell*, *Thomas*, and *Bethlehem*. But their tenants shall pay for so much as their leases are yearly worth, over and above the rents reserved.

Persons in *London* shall be assessed in the parishes where they dwell: And persons out of *London*, having any office in *London*, shall be assessed where they dwell.

And the assessors shall deliver one copy of the assessment unto the commissioners; who shall sign and seal two duplicates, and deliver one to the sub-collectors, with warrant to collect; and deliver the other to the receiver general.

And if any difference arise between landlord and tenant concerning the rates, the commissioners shall settle the same; and persons aggrieved by being over rated, on complaint in six days after demand to the commissioners who allowed the assessment, may by them be relieved.

And if any controversy shall arise which concerns any of the commissioners, he shall withdraw.

On

On non payment, the collectors may distrain; and in the day-time, taking with them the constable, may break open any house, chest, or box where the goods are. And if any question arise upon the taking such distress, the same shall be determined by the commissioners.

And if persons convey their goods, the commissioners may imprison them (not being peers) till payment; and tenants may deduct the same out of their rent.

And if the proportions be not fully paid, nor can be levied, the commissioners may reassess.

And if any person shall wilfully neglect to perform his duty in the execution of this ordinance, the commissioners may fine him, not exceeding 20 l. to be levied by distress, and paid to the receiver general.

And the receiver general shall have 1 d. in the pound; the sub-collectors 1 d. the head collectors 1 d. and the commissioners clerks 1 d.

But nothing herein shall be drawn into example, to the prejudice of the antient rights belonging to the peers.

And the same power which the commissioners had by this ordinance, (which is much in the manner of the ancient subsidies, and of the present land tax), the lieutenants and deputy lieutenants seem to have by the act of the 13 & 14 C. 2.

And the lieutenants and deputies, or the chief officers upon the place, in the respective counties and places, may charge carts, waggons, wains, and horses, for the carrying of powder, match, bullet, and other materials, allowing 6 d. a mile outward only, to every such cart, waggon and wain with five horses, or six oxen, and so proportionably; and for every horse employed out of waggon or cart 1 d. upon the marching of any regiment, company, or troop, on occasion of invasion, insurrection, or rebellion. 13 & 14 C. 2. c. 3. s. 8.

And the lieutenants shall appoint one or more treasurers, or clerks, for receiving and paying such monies when levied; of all which receipts and disbursements thereof, they shall every six months give their accounts in writing upon oath, to the lieutenants and deputies, or three of them: which account shall be forthwith certified to the privy council, and a duplicate thereof shall be certified to the justices at the next sessions. *id.* s. 12.

Always provided, that the lieutenants or their deputies shall not issue warrants for raising any trophy money, till the justices in sessions shall have examined, stated, and allowed the accounts of the trophy money collected for any preceding

preceding year, and certified such examination under the hands and seals of four or more such justices. 10 An. c. 25. s. 4.

VII. Power to search for arms.

The lieutenants, or two of their deputies, may by warrant under their hands and seals, employ such persons as they shall think fit (of which a commissioned officer, and the constable or his deputy, or in their absence some other person bearing office in the parish where the search shall be, shall be two) to search for and seize all arms in the custody of any person, whom the lieutenants or two of their deputies shall judge dangerous to the peace of the kingdom, and to secure the same, and thereof to give account to the lieutenants, and in their absence, or by their directions, to the deputies, or two of them: Provided, that no search be made in any house between sun-setting and sun-rising, other than in cities or their suburbs, and towns corporate, market towns, and houses within the bills of mortality, where they may search in the night time, if the warrant so direct; and in case of resistance, to enter by force: And no dwelling house of a peer to be searched, but by immediate warrant from the king, or in the presence of the lieutenant or a deputy lieutenant: And in all places and houses whatsoever, where search is to be made, it shall be lawful in case of resistance, to enter by force. And the arms so seized may be restored to the owners again, if the lieutenants, or in their absence as aforesaid, their deputies, or two of them, shall so think fit. 13 & 14 C. 2. c. 3. s. 14.

VIII. Constables to be assisting.

All high constables, petty constables, and other officers and ministers, shall be aiding and assisting to the lieutenants and their deputies, or any of them. 13 & 14 C. 2. c. 3. s. 15.

IX. Punishment for desertion or disobedience.

The yearly acts against mutiny and desertion do not extend to the militia.

But if any of the militia shall not appear and serve, completely furnished with horse and arms and other furniture, at the beat of drum, sound of trumpet, or other summons;

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mons; the lieutenants, and in their absence, or by their directions, the deputies, or two of them, if the default be in such person, may imprison him for five days; or may inflict a penalty, if he is a horseman, not exceeding 20s. and if a footman, not exceeding 10s. to be paid down without delay. 13 & 14 C. 2. c. 3. s. 10.

And the lieutenants, or deputies, or chief officers upon the place, may imprison mutineers, and such soldiers as do not their duty at the days of muster and training; and may inflict for punishment for every such offence, any pecuniary mulct not exceeding 5s. or imprisonment not exceeding twenty days. 13 & 14 C. 2. c. 3. s. 8.

And such person duly listed, shall not be exchanged, or desert, or be discharged, but by the leave of the lieutenant, or two deputies, or his captain, upon reasonable cause, first obtained in writing under hand and seal; on pain of 20l. to be levied as other penalties; and for non-payment, or want of distress, to be committed to the common gaol of the county, not exceeding three months. *id.* s. 25.

X. Punishment for imbezilling horse or furniture.

If any person shall detain or imbezil his horse, arms, or furniture, the lieutenants, and in their absence, or by their directions, the deputies, or two of them, if the default be in such person, may imprison him till he have made satisfaction. 13 & 14 C. 2. c. 3. s. 10.

XI. Officers pay.

For satisfaction of the officers for their pay, during such time (not exceeding one month) as they shall be with their soldiers in actual service, provision shall be made by the king out of the treasury. 13 & 14 C. 2. c. 3. s. 7.

And the lieutenants and deputies, or three of them, shall have power to dispose of so much of the said fourth part of the 70000l. a month, to the inferior officers, for their pains and encouragement, as to them shall seem expedient. 15 C. 2. c. 4. s. 12.

XII. Soldiers pay.

Every person charged shall (on pain of 5s.) pay on demand 2s. 6d. a day to each trooper, and shall (on pain of 2s.) pay on demand 1s. a day to each foot soldier, for

(Old) Militia.

so many days as they shall be absent from their dwellings or callings, by occasion of muster or exercise, unless some certain agreement be made to the contrary before good witness; and the said penalty is to be paid to such soldier, to whom his pay was denied; the respective penalties to be demanded in six weeks after default, or at or before the next muster or exercise, and not afterwards. 15 C. 2. c. 4. f. 2.

And in case of invasions, insurrections, or rebellions, whereby occasion shall be to draw out such soldiers into actual service; the persons so charged shall provide each their soldier with pay in hand not exceeding one month's pay, as shall be directed by the lieutenants, and in their absence, or by their directions, by the deputies or any two of them. 13 & 14 C. 2. c. 3. f. 7.

For the repayment whereof, provision shall be made by the king out of the treasury. *id.*

And in case a month's pay shall be provided and advanced as aforesaid, no person who shall have advanced his proportion thereof, shall be charged with any other like month's payment, until he shall have been reimbursed the said month's pay; and so from time to time, the month's pay by him last before provided and advanced. *id.*

XIII. Penalties how recoverable.

The forfeitures, penalties, and payments by the 15 C. 2. c. 4. not otherwise herein directed, may be recovered by warrant under the hands and seals of the lieutenants and deputies, or three of them, by distress and sale; and if sufficient distress cannot be found, then the party to be imprisoned till satisfaction shall be made. 15 C. 2. c. 4. f. 16.

XIV. Double costs.

Persons sued on either of the acts of the 13 & 14 C. 2. c. 3. or 15 C. 2. c. 4. may plead the general issue, and have double costs. And the action must be commenced in six months, and in the proper county. 15 C. 2. c. 4. f. 13, 14.

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(New) Militia.

- I. *Former acts repealed.*
- II. *Appointment of the lieutenants, deputy lieutenants, officers, and others, for execution of the service.*
- III. *Number of men to be raised in the several counties.*
- IV. *Proceedings where the militia have not been already raised.*
- V. *Issuing precepts to return lists.*
- VI. *Return and settling of the lists.*
- VII. *Proportioning the numbers in the several hundreds or other large divisions.*
- VIII. *Proportioning in the several parishes, tithings, or places.*
- IX. *Ballotting.*
- X. *Inlisting; and therein, of substitutes.*
- XI. *Forming the militia into regiments and companies.*
- XII. *Proceedings where the militia have been already raised.*
- XIII. *Training and exercise.*
- XIV. *Cloathing and pay.*
- XV. *Drawn out into actual service.*
- XVI. *Privileges and exemptions of militia men.*
- XVII. *General power of enforcing the execution hereof.*
- XVIII. *Exceptions with respect to particular places and persons.*

I. *Former acts repealed.*

BY the 2 Geo. 3. c. 20. (which is of force for seven years, &c.) all former acts relating to the raising the militia in *England* and *Wales*, shall be repealed, except in such cases as are herein specially directed to be subject to the provisions of the said former acts, or any of them;

(New) Militia

and the (new) militia raised by virtue of the said former acts, shall be subject to all the same provisions and regulations as the militia directed to be raised by virtue of this act are subjected to. *f. 144.*

But nothing herein shall extend to make void any thing already done in pursuance of the former acts, or to prevent the completing any proceedings already commenced in pursuance thereof. *f. 145.*

And whereas precepts in several places have already been issued for the returning of lists, and several proceedings have been had thereupon in pursuance of the said former acts; it is enacted, that the deputy lieutenants and justices shall continue to act and put in force the said former acts, in all matters and things subsequent to the precepts so issued, and the lists returned or to be returned thereupon; and the justices may cause to be levied the fines, penalties and forfeitures incurred or which may be incurred in pursuance of the said former acts, as in and by the said acts is directed. *f. 146.*

II. Appointment of the lieutenants, deputy lieutenants, officers and others, for execution of the service.

Appointment of the lieutenants, deputy lieutenants, and commission officers.

1. The king shall issue forth commissions of lieutenancy; and such lieutenants shall have the chief command of the militia, and shall have power, and are required, to call together all such persons, and to arm and array them, at such times, and in such manner, as is herein after expressed: And such lieutenants shall from time to time appoint such persons as they shall think fit, qualified as is herein after directed, and living within their respective counties, ridings, and places, to be their deputy lieutenants; the names of such persons having been first presented to, and approved by his majesty: And shall, before the third subdivision meetings for allotting the men, appoint a proper number of colonels, lieutenant colonels, majors, and other officers, qualified as is herein after directed; and shall certify to his majesty the names and ranks of such officers, within one month after they shall be so appointed; and if the king, within one month after such certificate shall signify his disapprobation of any such person, the lieutenant shall not grant to him a commission; but shall grant commissions to such persons so appointed, who shall not be disapproved by his majesty. 2 G. 3. c. 20. *f. 1, 5.*

2. When

2. When the lieutenant shall be absent out of the kingdom of *Great Britain*, the king may appoint three deputy lieutenants to grant commissions to officers, on any vacancy that shall happen during such absence. 2 G. 3. c. 20. f. 2.

When the lieutenant is absent, or the lieutenantcy is vacant.

And, more generally, by the 4 G. 3. c. 17. Where the office of lord lieutenant is vacant, the king may appoint three of the deputy lieutenants to execute the office of lord lieutenant during such vacancy. f. 2.

And by the 5 G. 3. c. 36. f. 3. If there shall happen to be no lieutenant, in any county or place; three deputy lieutenants, to be appointed by his majesty's sign manual, shall do every act necessary for carrying into execution the acts of the 2 G. 3. c. 20. the 4 G. 3. c. 17. and the said act of the 5 G. 3. c. 36.

3. Provided always, that nothing herein shall be construed to vacate any commission of lieutenantcy already granted, nor any commissions granted to officers; but the same shall continue in full force for the purposes of this act, so as the deputy lieutenants and officers be qualified as is herein after directed. 2 G. 3. c. 20. f. 3.

Deputations or commissions already granted, not to be vacated hereby.

4. Provided also, that no deputation or commission shall be vacated, by the revocation, expiration, or discontinuance of the lieutenant's commission. 2 G. 3. c. 20. f. 4.

Nor by vacating the lieutenant's commission.

5. In every county, riding, or place, (except as is herein after excepted) there shall be appointed 20 or more deputy lieutenants, if so many persons qualified can be therein found; if not, then so many as can be therein found; and each person so to be appointed a deputy lieutenant or colonel, shall be seised or possessed, either in law or equity, for his own use and benefit, in possession of a freehold, copyhold, or customary estate for life, or for some greater estate, or of an estate for some long term of years determinable on one or more lives, in manors, messuages, lands, tenements, or hereditaments, in *England, Wales, or Berwick upon Tweed*, of the yearly value of 400 l. or shall be heir apparent of some person who shall be, in like manner seised or possessed of a like estate of the yearly value of 800 l. lieutenant colonel, or major, shall be seised or possessed of a like estate of the yearly value of 300 l. or shall be heir apparent of some person who shall be seised or possessed of a like estate of the yearly value of 600 l. and each person so to be appointed captain, shall be seised or possessed of a like estate of the yearly value of 200 l. or shall be heir apparent of some person who shall be seised or possessed of a like estate of the yearly value of 400 l. or shall be

General qualification of the officers.

a younger son of some person who shall be, or at the time of his death was, seised or possessed of a like estate of the yearly value of 600l. Lieutenant shall be in like manner seised or possessed of a like estate of the yearly value of 100l. or shall be son of some person who shall be, or at the time of his death was, seised or possessed of a like estate of the yearly value of 200l. Ensign shall be seised or possessed of a like estate of the yearly value of 20l. or shall be son of some person who shall be, or at the time of his death was, seised or possessed of a like estate of the yearly value of 50l. one moiety of which said estates, required as qualifications for each deputy lieutenant, colonel, lieutenant colonel, major, and captain respectively, shall be situate or arising within such respective county or riding in which he shall be appointed to serve. 2 G. 3. c. 20. s. 5.

Provided, that the immediate reversion or remainder of and in manors, messuages, lands, tenements, or hereditaments, which are leased for one, two, or three lives, or for any term of years determinable on the death of one, two or three lives, on reserved rents, and which are to the lessees of the clear yearly value of 300l. shall be deemed equal to an estate herein before described, of the yearly value of 100l. and so in proportion. s. 6.

Also, a person possessed, either in law or equity, for his own use and benefit, in possession of an estate for a certain term originally granted for 20 years or more, of an annual value (over and above all rents and charges payable out of or in respect of the same) equal to the annual value of such an estate as is required for the qualification of a deputy lieutenant and commission officer respectively, and situate as aforesaid, shall be deemed duly qualified. s. 7.

Qualification in
the smaller
counties.

6. In the several counties of *Cumberland, Huntingdon, Monmouth, Westmorland, and Rutland*, and in every county and place in *Wales*, there shall be five or more deputy lieutenants appointed (if so many qualified can be found therein); and the estates requisite for the qualification of the deputy lieutenants and officers therein shall be as follows: A deputy lieutenant or colonel shall be seised or possessed of a like estate as aforesaid, of the yearly value of 300l. or shall be heir apparent of a person having a like estate of 500l. lieutenant colonel or major 200l. or heir apparent of a person having a like estate of 400l. captain 150l. or son of a person who shall be or at the time of his death was seised or possessed of a like estate of 300l. lieutenant

tenant 70 l. or son of a person who shall be or at the time of his death was seised or possessed of a like estate of 200 l. ensign 20 l. or son of a person who shall be or at the time of his death was seised or possessed of a like estate of 50 l. one half of all which estates, except those for the qualifications of lieutenants and ensigns, shall be situate or arising in their respective counties. 2 G. 3. c. 20. s. 8.

And where 20 deputy lieutenants cannot be found qualified, and willing to act; his majesty's lieutenant, after having appointed so many as can be found qualified, may appoint such number as shall be requisite to make up the number 20, who shall be seised or possessed of a like estate of the yearly value of 200 l. and situate as aforesaid: Provided, that the persons so appointed shall not make the whole number to exceed twenty. s. 9.

7. In the isle of *Ely*; a deputy lieutenant shall be seised or possessed of a like estate of the yearly value of 200 l. or shall be heir apparent to a person having a like estate of 400 l. captain, 100 l. or heir apparent of a person having a like estate of 200 l. or younger son of a person who shall be, or at the time of his death was, seised or possessed of a like estate of the yearly value of 300 l. lieutenant, 50 l. or son of some person who shall be, or at the time of his death was, seised or possessed of a like estate of 100 l. ensign, 20 l. or son of some person who shall be, or at the time of his death was, seised or possessed of a like estate of the yearly value of 50 l. one-half of all which estates, except those for the qualification of lieutenants and ensigns, shall be situate or arising within the said island. 2 G. 3. c. 20. s. 10.

8. In all cities or towns which are counties within themselves, and have heretofore used to raise and train a separate militia within their respective liberties, and which are by this act united with and made part of any county for the purposes of this act only; his majesty's lieutenant of such cities or towns, or where there is no lieutenant appointed by his majesty, the chief magistrate of such city or town, shall appoint five or more deputy lieutenants (if so many duly qualified can be found), and shall also appoint officers of the militia, whose number and rank shall be proportionable to the number of militia men which such city or town shall raise, as their quota towards the militia of the county to which such city or town is by this act united for the purposes aforesaid; and all powers given and provisions made by this act with respect to counties at large, shall take place in the said cities and towns, except

In the isle of *Ely*.
In cities or towns being counties within themselves.

only, that after the number of persons which such city or town is to furnish shall have been appointed as aforesaid by his majesty's lieutenant and the deputy lieutenants, or by the deputy lieutenants of the county at large, two deputy lieutenants within such city or town shall have and exercise all the powers conferred by this act on three deputy lieutenants, or two deputy lieutenants together with one justice, or one deputy lieutenant together with two justices, of any county at large: And the qualification for a deputy lieutenant and field officer shall be 300 l. a year as aforesaid; or a personal estate alone, or real and personal estate together to the amount or value of 5000 l. captain, 150 l. a year; or personal estate alone, or real and personal together, to the value of 2500 l. lieutenant or ensign 50 l. a year, or personal estate of 750 l. one half of all which real estates (except those for the qualification of lieutenants and ensigns) shall be within such city or town, or within the county at large to which such city or town, is by this act united for the purposes aforesaid: And his majesty's lieutenants, and the chief magistrates of such cities or towns being counties within themselves, shall put the powers of this act for raising and training the militia within such cities or towns in execution: but the militia of such cities and towns, being by this act declared to be part of the militia of the counties to which such cities and towns are united for the purposes aforesaid, the militia of such cities or towns shall join the militia of the county to which such cities or towns are so united for the purposes aforesaid; and the whole militia so joined together, shall be exercised together at the general exercise; and shall then, and also when drawn out and embodied, be deemed the militia of the county to which such cities or towns are so united. 2 G. 3. c. 20. f. 11.

In the tower
hamlets.

9. The qualifications above recited, to enable any person to be a deputy lieutenant, lieutenant colonel, major, captain, lieutenant, or ensign, shall not extend to commissions granted by the constable of the tower, or lieutenant of the tower hamlets. 2 G. 3. c. 20. f. 13.

Promotion on
account of merit.

10. When any regiment or battalion shall be drawn out and embodied; the lieutenant may, upon account of military merit shewn in time of actual invasion or actual rebellion, promote any officer therein, from a lower to a higher commission, inclusive of that of lieutenant colonel, notwithstanding he should not have the qualification requisite for his first admittance into such higher rank: Provided, that no person, not having the qualification herein

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before directed for a captain, shall be promoted to a higher rank than that of captain. 2 G. 3. c. 20. f. 12.

11. The king, from time to time, may signify his pleasure to his lieutenant to displace any such deputy lieutenants and officers; and thereupon the lieutenant shall appoint others in their stead. 2 G. 3. c. 20. f. 14.

Displacing officers.

12. And no deputy lieutenant or commission officer shall act as such, until he shall have left with the clerk of the peace of the county or place for which he shall be so appointed, his qualification in writing signed by himself: and the clerk of the peace shall enter the same on a roll to be kept for that purpose. 2 G. 3. c. 20. f. 15.

Officer to enter his qualification with the clerk of the peace.

13. And every deputy lieutenant and commission officer, not having already taken and subscribed the oaths, and made and subscribed the declaration required by the former militia acts, shall at some general quarter sessions, or in one of the courts of record at *Westminster*, within six months after he shall have accepted his commission, take the oaths and make and subscribe the declaration, as other persons qualifying for offices. 2 G. 3. c. 20. f. 15.

And to take the oaths.

14. Deputy lieutenant, colonel, lieutenant colonel, or major, acting not being qualified, or not delivering in such qualification, and taking the oaths and subscribing the declaration, shall forfeit 200 l. captain, lieutenant, or ensign, 100 l. half to him who shall sue, and half to the uses herein after directed. 2 G. 3. c. 20. f. 16.

Penalty of acting not being qualified.

And the proof of the qualification shall lie on him against whom the action is brought. f. 17.

But by the 5 G. 3. c. 4. they are indemnified, provided they qualify, and deliver in their qualification, on or before Aug. 1. 1765.

15. Provided, that nothing herein shall extend to restrain the lieutenant from appointing any peer of this realm or his heir apparent, to be a deputy lieutenant or commission officer, within the county or place wherein he shall have some place of residence; or to oblige any peer or heir apparent of such peer (so appointed) to leave his qualification with the clerk of the peace: but it shall be lawful for him taking the oaths, and making and subscribing the declaration aforesaid, to act, altho' he shall not have such estate in manors, messuages, lands, tenements, or hereditaments, as is required by this act. 2 G. 3. c. 20. f. 18.

Exception as to peers.

16. Provided also, that the acceptance of a commission in the militia, shall not vacate the seat of any member returned to serve in parliament. 2 G. 3. c. 20. f. 19.

Commission not to vacate a seat in parliament.

17. His

How long the
officers shall
continue.

17. His majesty's lieutenant together with three deputy lieutenants, and on the death or removal or in the absence of his majesty's lieutenant, any five deputy lieutenants, shall, at the end of every four years, at their annual meeting, in case the militia of such county or place shall not be then embodied, discharge some one field officer of each regiment or battalion, and such a number of officers of each inferior rank, as shall be equal to the number of persons who shall have given notice in writing to his majesty's lieutenant, one month at least before such meeting, that they are willing to serve as field officers, captains, lieutenants or ensigns, as the case may require. 2 G. 3. c. 20. f. 30.

Provided, that the number of vacancies to be made shall not exceed one third of such officers who shall have served for four years in each rank respectively. f. 31.

Provided also, that nothing herein shall prevent any officer who has served four years, from offering himself to serve in an higher rank, if he be qualified as this act requires to serve in such higher rank. f. 32.

Lieutenant may
act as colonel.

18. It shall be lawful for the lieutenant to act as colonel of any regiment or battalion, during such time as there shall not be any colonel; but no lieutenant shall act at any one time as colonel to more than one regiment or battalion. 2 G. 3. c. 20. f. 28.

And where the lieutenant shall serve as colonel to any body of militia by this act deemed a battalion only; he shall not, when such battalion shall be embodied and in actual service, receive any other pay than that of a lieutenant colonel; and no other person shall serve or be intitled to pay as a lieutenant colonel in such battalion, during the time that the said lieutenant shall serve as colonel. f. 29.

Adjutant.

19. His majesty may appoint one proper person, who shall have served, or at the time of such appointment shall actually serve, in some of his majesty's other forces, or in any corps of militia that has been drawn out and embodied, to be an adjutant to each regiment, battalion, or independent company; and such adjutant, if appointed out of his majesty's other forces, shall, during his service in the militia, preserve his rank in the army, in the same manner as if he had continued in that service; and the lieutenant may grant to the adjutant a commission of lieutenant, or any inferior commission, although such adjutant shall not have an estate to qualify him for such commission as is required by this act. 2 G. 3. c. 20. f. 33.

20. And

20. And any person who has quitted or shall quit his half pay, to serve as a commissioned officer in the militia, shall on his quitting the militia, or on the unembodying thereof, be restored to his half pay; the same to recommence from the last quarter day, or day of payment next preceding. 2 G. 3. c. 20. s. 35. Officers quitting half pay.

21. His majesty may appoint, according to the proportion of one serjeant to 20 private men, two or more serjeants to each company, out of his other forces; such persons having served in the said forces for one year next preceding such appointment; or may appoint such other persons to be serjeants, as have formerly served for one year in his said forces; or out of any corps of militia that has been drawn out and embodied: which serjeants so appointed, shall take the following oath, Serjeant.

I A. B. do sincerely promise and swear, that I will be faithful and bear true allegiance to his majesty king George, his heirs and successors: and I do swear, that I am a protestant, and that I will faithfully serve as a serjeant in the militia, within the kingdom of Great Britain, for the defence of the same, until I shall be legally discharged. 2 G. 3. c. 20. s. 36.

And the colonel, or where there is no colonel the lieutenant colonel, or where there is no colonel or lieutenant colonel, the major, shall appoint a serjeant major out of the serjeants. *id.*

And the service in the militia of such persons so appointed out of his majesty's other forces, shall intitle them to the benefit of *Chelsea* hospital, in the same manner as if they had continued to serve in the said forces; and every person appointed to be a serjeant out of the pensioners on the establishment of *Chelsea* hospital, shall be put again upon the said establishment after his discharge from the militia, provided he brings a certificate of his good behaviour under the hand of the colonel or commanding officer. *id.*

And the captain of every company (with the approbation of the colonel, or where there is no colonel, of the lieutenant colonel, or where there is no lieutenant colonel, of the major of the regiment or battalion) shall appoint serjeants out of the private men, to fill up vacancies; who shall take the like oath as serjeants appointed by his majesty (which oath any one deputy lieutenant, or if the regiment or battalion shall be embodied and in another county, riding or place, any one justice there may administer.) s. 38.

But

But no person who shall keep any house of publick entertainment, or who shall sell any ale, wine, brandy, or other spirituous liquors by retail, shall be capable of being appointed or continuing a serjeant in the militia. *f. 37.*

And it shall be lawful for the commanding officer of any regiment or battalion, being a field officer, on the application of the captain to displace serjeants. *f. 38.*

Provided, that if any person who is or shall be appointed out of his majesty's other forces, to be a serjeant in the militia, and shall be for any misbehaviour reduced into the ranks, shall not within one month after such reduction be restored; he shall be returned to the company from which he was taken in his majesty's other forces, and shall then serve as a private man: And any person appointed a serjeant in the militia out of any company of militia, may be reduced into the ranks for misbehaviour, and shall serve there till he shall have compleated his three years service as a private militia man; and if there shall be no vacancy in the company from whence he was taken, he shall serve in any other company of the regiment or battalion. *f. 39.*

Corporal.

22. The captain of every company may appoint corporals out of the private men of his company, in the proportion of one corporal to twenty private men; and may displace such corporals for misbehaviour, and appoint others, as he shall see occasion. *2 G. 3. c. 20. f. 38.*

Drummer, and fifer.

23. And the captain also may appoint two persons to be drummers or fifers to his company. And the colonel, or where there is no colonel the lieutenant colonel, or where there is no colonel or lieutenant colonel the major, shall appoint a drum major out of the drummers. Which drummers and fifers, when so appointed, and having received any pay as such, shall be deemed to be engaged, and compellable to serve in the same regiment or battalion, until legally discharged. And such captain may displace such drummers or fifers for misbehaviour, and appoint others in their room. *2 G. 3. c. 20. f. 36, 38.*

And if, during the time the militia shall not be called out, any drummer shall be negligent in his duty, or disobedient to the orders of the adjutant or other his superior officer, and thereof be convicted on the oath of the adjutant or other his superior officer or other credible witnesses, before one justice of the county in the militia of which such drummer serves; he shall forfeit any sum not exceeding 40s. and if not paid immediately, the captain or commanding officer of the company to which such drummer

mer

mer belongs shall stop his pay, until the same shall amount to the sum ascertained by the justice; and the said captain or commanding officer shall pay the same to the clerk of the regiment or battalion, to be applied as part of the common stock. 4 G. 3. c. 17. f. 8.

24. If any serjeant, drummer, or fifer, shall enlist in any of his majesty's other forces; such enlisting shall be void. 2 G. 3. c. 20. f. 40. Serjeant, drummer, or fifer enlisting.

25. His majesty's lieutenant shall appoint a clerk for the general meetings; and may displace such clerk, if he think fit, and appoint another in his room. 2 G. 3. c. 20. f. 90. Clerks of the meetings.

And the deputy lieutenants within their subdivisions, shall appoint a clerk for their respective subdivision; and may displace him if they think fit, and appoint another in his room. *id.*

26. His majesty's lieutenant shall from time to time, as occasion shall require, appoint a clerk to each regiment or battalion. 2 G. 3. c. 20. f. 36. Clerk of the regiment or battalion.

And by another clause in the said act, when any regiment or battalion shall be unembodied, the colonel, or where there is no colonel the commanding officer, shall appoint a regimental clerk to such regiment or battalion. f. 98.

27. When any regiment or battalion shall be embodied, Agent; and during the time they shall continue embodied, the colonel, or where there is no colonel the commanding officer, shall appoint an agent; and take security from such agent; and such colonel or commanding officer respectively shall be liable to make good all deficiencies on account of the pay, clothing or publick stock. 2 G. 3. c. 20. f. 119.

III. Number of men to be raised in the several counties.

1. The number of private men to be raised (exclusive of the places herein after excepted) shall be as follows: Number of private men.

For the county of Bedford	- - - - -	400
Berks	- - - - -	560
Bucks	- - - - -	560
Cambridge	- - - - -	480
Chester, with the city and county of the city of		
Chester	- - - - -	560
Cornwall	- - - - -	640
Cumberland	- - - - -	320
Derby	- - - - -	560
		Devon,

(New) Militia.

Devon, with the city and county of the city of Exeter - - - - -	1600
Dorset, with the island of Purbeck, and the town and county of the town of Poole - - - - -	640
Durham - - - - -	400
Essex - - - - -	960
Gloucester, with the city and county of the city of Bristol - - - - -	960
Hereford - - - - -	480
Hertford - - - - -	560
Huntingdon - - - - -	320
Kent, with the city and county of the city of Canterbury - - - - -	960
Lancaster - - - - -	800
Leicester - - - - -	560
Lincoln, with the city and county of the city of Lincoln - - - - -	1200
Middlesex (exclusive of the tower hamlets) - - - - -	1600
Monmouth - - - - -	240
Norfolk, with the city and county of the city of Norwich - - - - -	960
Northampton - - - - -	640
Northumberland, with the town and county of the town of Newcastle, and town of Berwick - - - - -	560
Nottingham, with the town and county of the town of Nottingham - - - - -	480
Oxford - - - - -	560
Rutland - - - - -	120
Salop - - - - -	640
Somerset - - - - -	840
Southampton, with the town and county of the town of Southampton - - - - -	960
Stafford, with the city and county of the city of Litchfield - - - - -	560
Suffolk - - - - -	960
Surrey - - - - -	800
Sussex - - - - -	800
Warwick, with the city and county of the city of Coventry - - - - -	640
Westmorland - - - - -	240
Worcester, with the city and county of the city of Worcester - - - - -	560
Wilts - - - - -	800
York, West Riding, with the city and county of the city of York - - - - -	1240
— North Riding - - - - -	720
	East

— East Riding, with the town and county	
of the town of Kingston - - - - -	400
Anglesea - - - - -	80
Brecknock - - - - -	160
Cardigan - - - - -	120
Caermarthen - - - - -	200
Carnarvon - - - - -	80
Denbigh - - - - -	280
Flint - - - - -	120
Glamorgan - - - - -	360
Merioneth - - - - -	80
Montgomery - - - - -	240
Pembroke - - - - -	160
Radnor - - - - -	120

2 G. 3. c. 20. f. 41.

2. His majesty's lieutenant shall transmit to the privy council, from time to time, a true state of the numbers of persons fit to serve in the militia for the county or place of which he is lieutenant; and after all the said numbers shall be so transmitted to the privy council, the said council shall fix and settle, as near as may be, the number of private militia men, who shall for the future serve for each county, riding, or place, within that part of *Great Britain* aforesaid, by the proportion which the numbers returned for each county, riding, or place bear to the whole number of private militia men directed to be raised within that part of *Great Britain* aforesaid; and forthwith transmit accounts of the numbers so fixed and settled to all his majesty's lieutenants of the several counties and places respectively. And where the number of private militia men so fixed and settled as aforesaid, shall be respectively greater than the number of private militia men, who shall have been by virtue of the aforesaid act appointed to serve for any county, riding, or place; in such case, his majesty's lieutenant together with two deputy lieutenants, or in the absence of his majesty's lieutenant three deputy lieutenants, shall at a general meeting, to be held for that purpose, appoint what number of private militia men shall serve for each respective hundred, rape, lathe, wapentake, or other division, within the county, riding, or place, to which they belong; and the additional number of private militia men to make up the whole number so fixed and settled as aforesaid, shall be provided or chosen, and sworn and inrolled, in like manner as all other private militia men. And where the number of private militia men so fixed and settled as aforesaid, shall be respectively

spectively less than the number of private militia men, who shall be by virtue of this act appointed to serve for any county, riding or place; in such case, his majesty's lieutenant together with two deputy lieutenants, and on the death or removal or in the absence of his majesty's lieutenant three deputy lieutenants, shall at a general meeting to be held for that purpose, discharge by lot proportionably out of each respective hundred, rape, lathe, wapentake, or other division, so many private militia men as shall exceed the number so fixed and settled as aforesaid. 2 G. 3. c. 20. s. 74.

IV. Proceedings where the militia have not been already raised.

Advertisement
for accepting
commissions,

1. In every county where the militia shall not be raised, the lieutenant shall within one month before the christmas sessions, and within one month before the midsummer sessions, yearly, cause advertisements to be published in the London gazette, and the news papers of such county, signifying the want of officers: and all persons qualified and willing to serve as officers, shall at any time return their names and intention to the lieutenant, or in his absence, to any general quarter sessions for the county in which they propose to serve. 2 G. 3. c. 20. s. 20.

Counties not
raising their mi-
litia, to pay 5l.
for each man.

2. And where the militia has not been raised, and shall not be raised in pursuance of this act, the sum of 5l. shall be annually paid for every private militia man not raised as aforesaid; and the lieutenant shall certify in writing under hand and seal, yearly, to the sessions to be holden next after the second Tuesday in May, that the militia has not been raised for such county or place for the preceding year, and also the whole amount of the several sums of 5l. a man to be raised on such county or place: And if the lieutenant shall be beyond the seas, he shall under hand and seal appoint three or more deputy lieutenants to certify as aforesaid; which deputy lieutenants, or some one or more of them, shall so certify: And if the lieutenant be beyond the seas, and no deputy lieutenants appointed to certify as aforesaid; then the clerk of the peace shall certify, and the justices shall proceed thereon, as if such certificate had been made by his majesty's lieutenant. 5 G. 3. c. 36. s. 1, 2, 4.

And the justices at such sessions shall forthwith rate and assess on the said county the sums mentioned in such certificate, the same to be rated and assessed, collected, levied, paid, and accounted for by the collectors, in such man-

ner, and with such powers of distress and other remedies for enforcing the collection and payment, and punishing the collectors for neglect of duty, as the county rates have been usually, or may be, assessed, collected, levied, paid, and accounted for, by the act of 12 G. 2. c. 29. or any other act. And such rates, when received, shall be paid by the treasurer of such county to the receiver general thereof; whose receipt shall be a sufficient discharge. 2 G. 3. c. 20 f. 23.

3. And such rate, made by such justices, shall be separate and distinct from all other county rates within such county, notwithstanding the said act of 12 G. 2. c. 29. or any other act, usage, or custom to the contrary. 2 G. 3. c. 21. f. 22.

Out of a special rate to be made for that purpose.

4. And every tenant or occupier of any house, land, tithe, tenement, or hereditament, may deduct the same out of his rent. 2 G. 3. c. 20. f. 23.

Tenant to deduct the same.

Provided, that this shall not vacate any covenant or agreement, contained in any lease between landlord and tenant, where the estate leased is not let at rack rent; and no landlord of any estate which shall not be let at rack rent shall be obliged to allow to the tenant any money which he shall pay towards any county rate to be made in pursuance of this act, but in proportion only to the rent such landlord shall receive. f. 24.

5. In all cases, where a certain number of private militia men are directed to be raised for any county, together with any city or town, being a county of it self, and the militia thereof has not been or shall not be raised; the payment of the said sum of 5 l. a man shall be proportioned between such county and such city or town according to their land tax: unless an apportionment of the men shall actually have been made in pursuance of the lists directed to be returned by the former acts or by this act; in which case, such county and such city or town shall pay according to their respective number of men so apportioned as aforesaid. 2 G. 3. c. 20. f. 25.

Case where a town, being a county of it self, is joined with a county.

6. In like manner, where any city, town, or place shall not be rated to the county rate, the said payment of 5 l. a man shall be proportioned between the county and such other place, according to their land tax; and the same in such other place shall be paid out of the poor rate, and the churchwardens and overseers shall pay over the same to the treasurer of such county. 4 G. 3. c. 17. f. 9.

Case where such town or place is not rated to the county rate.

And the like rule shall be observed in cities, towns, and places, which are counties of themselves, and have no such

rate as the county rate, nor any powers for collecting the proportion of the said sum of 5 l. a man, to be raised by the county, to which such city, town, or place is united for the purposes aforesaid. *f. 10.*

Where a town
lies in two coun-
ties.

7. Where a town lies in two counties, they shall pay their quota for and in lieu of raising the militia, for that county only where the church of the said town is situate. *4 G. 3. c. 17. f. 11.*

The same to be
levied by distress.

8. And if any sum, which ought to be paid by such place not rated to the county rate, shall not be paid to the treasurer before Sept. 10. yearly; the justices shall, at the next Michellmas sessions, issue an order to the overseers of the poor of each respective parish or place, within each city, town, or place not rated to the county rate as aforesaid, requiring them to certify and return to the said justices at their next Christmalls sessions, the several quotas which each of the said parishes or places respectively pays to the land tax for that year; and the justices, at such Christmalls sessions, shall (by their bench warrant, directed to any constable or tithingman within such places) cause the same to be levied by distress of the goods of any churchwarden or overseer within such place respectively; and such churchwardens and overseers shall be reimbursed in like manner as for money expended for relief of the poor. *5 G. 3. c. 36. f. 5.*

And to go in aid
of the counties
which raise their
militia.

9. And the receiver general of the land tax, to whom such money shall be paid by the treasurer, shall pay the same together with the land tax, into the exchequer, and distinguish upon every such payment the money received by virtue of this act; which shall be kept separate from all other money; and shall be paid by the commissioners of the treasury, or any three of them, to the treasurers of such counties as have raised or shall raise their militia, in proportion to the number of men raised by each county respectively, to be by them made part of the county stock; and no allowance or deduction shall be made out of the said sums so paid into the exchequer, on any account whatsoever. *2 G. 3. c. 20. f. 26.*

Counties on rais-
ing their militia,
to be discharged.

10. Provided nevertheless, that if the militia shall be raised for any of the said counties or places; they shall during such time be discharged from such payment, and the assessments during such time shall be suspended. *2 G. 3. c. 20. f. 27.*

V. Issuing

V. Issuing precepts to return lists.

1. Where the militia has not been raised, his majesty's lieutenant together with two or more deputy lieutenants, A general meeting to be had. and on the death or removal or in the absence of his majesty's lieutenant, any three or more deputy lieutenants, shall meet at some city or principal town of the county or place on the second tuesday in May, in every year; and if there shall happen to be no such meeting on that day, then the said lieutenant, or, on his death or removal or in his absence, three deputy lieutenants, shall summon or cause to be summoned another meeting to be holden there, on a day to be fixed by such summons; of which day and place, notice shall be given in the London gazette, and also in any weekly paper usually circulated in such county or riding, 14 days at least before the holding of such meeting. 2 G. 3. c. 26. s. 42.

Note, generally, that the general meetings are to consist of the lieutenant, together with two deputy lieutenants; or, on the death, or removal, or in the absence of the lieutenant, of three deputy lieutenants.

But within the smaller counties, to wit, of *Cumberland, Huntingdon, Monmouth, Westmorland, Rutland*, and all the counties in *Wales*, two deputy lieutenants with one justice, or one deputy lieutenant with two justices, may exercise all the powers conferred by this act on three deputy lieutenants in other places. s. 91.

2. At the said first general meeting, his majesty's lieutenant, or on his death, or removal, or in his absence, three deputy lieutenants shall appoint subdivisions. Subdivision meetings to be appointed. 2 G. 3. c. 26. s. 42.

Which said subdivision meetings are to consist of three deputy lieutenants, or two deputy lieutenants together with one justice, or one deputy lieutenant together with two justices.

And of the aforesaid general meetings there are to be three; the first, for issuing precepts to return lists; the second, for proportioning the numbers in the several larger divisions, as hundreds, or wards; the third, for forming the militia into regiments and companies.

Of the subdivision meetings, four; the first, for taking in the lists, and hearing appeals; the second, for proportioning the numbers in the smaller divisions, as parishes, or townships; the third, for balloting, and the fourth, for swearing and inrolling the men.

And others occasionally.

Where the militia are on foot; there is to be one general meeting annually; and four subdivision meetings; and others, as occasion may fall out.

But not to restrain the deputy lieutenants and justices from acting in the county at large.

What shall be done, where a sufficient number shall not appear.

Precepts to be issued for returning lists.

Persons exempted.

3. But notwithstanding the appointment of subdivision meetings, it shall be lawful for any deputy lieutenant or justice to act in any and every subdivision within the county, riding or place. 2 G. 3. c. 20. f. 89.

4. If there shall not appear at any subdivision meeting, a sufficient number of deputy lieutenants and justices to act; the clerk shall by notice given in writing to all the deputy lieutenants within such subdivision, or left at their respective places of abode, appoint another meeting to be held within 14 days, at the same place where such meeting had been before appointed to be held, giving at least five days notice thereof. 2 G. 3. c. 20. f. 92.

5. At the said first general meeting, the lieutenant, or on his death or removal, or in his absence three deputy lieutenants, shall issue (A) their orders to the chief constable, and where there is no chief constable, to some other officer of the several hundreds, rapes, laths, wapentakes, or other divisions, to require by orders under their hands the constable or other such officer of each parish, tithing or place, to return to the deputy lieutenants within the subdivisions, at the place and on the day appointed at the said first general meeting, fair and true lists in writing, of the names of all the men usually and at that time dwelling within their respective parishes, tithings and places, between the ages of 18 and 45 years, distinguishing their respective ranks and occupations; and where the true names of such persons cannot be procured, the common appellation of such person shall be sufficient; and which of the persons so returned labour under any infirmities, incapacitating them from serving; having first affixed a true copy of such list on the door of the church or chapel, and if any place have no church or chapel, then on the door of the church or chapel of some parish or place thereto adjoining, on some Sunday morning before they shall make such return, which Sunday shall be three days at the least before the said meeting; and also notice in writing, at the bottom of such list, of the day and place of such meeting, and that all persons who shall think themselves aggrieved, may then appeal, and that no appeal will be afterwards received. 2 G. 3. c. 20. f. 42.

6. Provided, that no peer of this realm, nor any person who shall serve as a commission officer in his majesty's other forces,

forces, or in any of his castles or forts; nor any non-commission officer serving, or who has served, four years in the militia; nor any person being a member of either of the universities; nor any clergyman; nor any licensed teacher of any separate congregation; nor any constable, or other such peace officer; nor any articulated clerk, apprentice, seaman, or seafaring man; nor any person mustering and doing duty in any of his majesty's docks; nor any person free of the company of watermen of the river *Thames*; nor any poor man who has three children born in wedlock; shall be compelled to serve personally, or to provide a substitute. 2 G. 3. c. 20. f. 43.

7. And if the deputy lieutenants and justices at any sub-division meeting, shall receive information, or suspect, that any person inserted in any list, described as an apprentice, has been fraudulently bound in order to avoid serving; they may inquire into such binding, and summon witnesses, and examine them on oath: And if such fraud shall appear, they may appoint such person so bound apprentice, to serve immediately in the militia of the place for which such list was returned, if there be a vacancy; if not, then on the first vacancy that shall happen therein: And the person to whom such apprentice shall be so bound, shall forfeit 10 l. which, if not forthwith paid, shall be levied by distress; half to the informer, if any; and the other half, or, if there shall be no informer, then the whole, to be applied in manner hereafter mentioned. 2 G. 3. c. 20. f. 73. Fraudulent apprenticeship.

8. If any chief constable, constable, or other officer, shall refuse or neglect to return such list, or to comply with such orders as he shall receive from the lieutenant, deputy lieutenants, and justices, in pursuance of this act; or shall in making such return be guilty of any fraud or wilful partiality; any three deputy lieutenants, or two deputy lieutenants with one justice, or one deputy lieutenant with two justices, may imprison him in the common gaol for one month, or at their discretion may fine him in any sum not exceeding 5 l. nor under 40 s. by distress. 2 G. 3. c. 20. f. 71. List fraudulent.

And any person who shall by gratuity, gift, or reward, or by promise thereof, or of any indemnification, or by menaces, endeavour to prevail on any constable or other officer to make a false return, or to erase or leave out the name of any person who ought to be returned; he shall forfeit 50 l. to him who shall sue: and if any person shall refuse to tell his christian and surname, or the christian and surname of any man lodging or residing within his

house, to any constable or other officer authorized by this act to demand the same; he shall forfeit 10l. *f. 72.*

Lift lost.

9. If the lift of any parish or place shall be lost or destroyed; the deputy lieutenants and justices, in their subdivisions, may cause a new lift to be made and returned to them at their next subdivision meeting, in like manner as the former was. *2 G. 3. c. 20. f. 58.*

Second general meeting appointed.

10. At the said first meeting, shall be appointed also, the time and place for a second general meeting. *2 G. 3. c. 20. f. 42.*

VI. Return and settling of the lifts.

Lifts to be returned upon oath.

1. On the day and at the place appointed for the first subdivision meeting as aforesaid, for the return of the lifts, the constables or other officers respectively shall attend, and verify their return upon oath. *2 G. 3. c. 20. f. 42.*

Appeals heard and determined.

2. And the deputy lieutenants and justices, so assembled in their subdivisions, shall (after hearing any person who shall think himself aggrieved, by having his name inserted, or by any others being omitted) direct such lifts to be amended as the case shall require; and also the names of all persons by this act excepted, to be struck out of the said lifts. *2 G. 3. c. 20. f. 42.*

Case where a person hath two places of abode.

3. A person having more than one place of residence, shall be deemed to reside only, and shall serve, within the county or place, where his name shall have been first inserted in a lift, and returned; and the clerk to the subdivision meeting to which such lift shall be returned, shall on request grant a certificate *gratis*, that such person's name was inserted in such lift, specifying the times when such lift was made and returned. *2 G. 3. c. 20. f. 94.*

Time appointed for a second subdivision meeting.

4. And at the said first subdivision meeting they shall appoint a time and place for the second meeting within the subdivisions; for proportioning the numbers in the several parishes and townships, after they shall have been first proportioned, at the second general meeting, in the hundreds, rapes, and other large divisions. *2 G. 3. c. 20. f. 42.*

Lifts to be returned to the second general meeting.

5. For which purpose, they shall also, at the said first subdivision meeting, return to the second general meeting, all the lifts of the several parishes, tithings, and places, so amended as aforesaid, that the men may be by them proportioned in the several larger divisions as aforesaid. *2 G. 3. c. 20. f. 42.*

6. Note,

6. Note, that after every subdivision meeting, the clerk of the said meetings, shall within 14 days after each meeting, transmit to his majesty's lieutenant fair and true copies of the rolls signed at the said meetings. 2 G. 3. c. 20. f. 70.

Clerk to transmit an account of the proceedings.

VII. Proportioning the numbers in the several hundreds or other large divisions.

1. At the second general meeting as aforesaid, they shall appoint what number of men in each respective hundred, rape, lath, wapentake, or other division, shall serve in the said militia, towards raising the number of men by this act directed to be raised for such respective county, riding, or place, in proportion to the whole number contained in such lists. 2 G. 3. c. 20. f. 42.

Numbers proportioned in the several hundreds.

2. And if it shall appear at any time to the general meeting, that the distribution by them made amongst the several hundreds and other like divisions, was either unequally or erroneously made, or, from any subsequent alteration of circumstances, is become unequal and disproportionable; they may make a new distribution in like manner as at first. 2 G. 3. c. 20. f. 75.

The same may be altered from time to time.

3. At the said second general meeting, they shall order copies to be made of all the said lists; and such copies to be returned to the second subdivision meetings. 2 G. 3. c. 20. f. 42.

Copies to be transmitted to the second subdivision meetings.

VIII. Proportioning in the several parishes, tithings, or places.

1. At the second subdivision meeting as aforesaid, the deputy lieutenants and justices shall appoint what number of men shall serve for each parish, tithing, and place; in proportion to the number appointed at the second general meeting to serve for each hundred, rape, lath, wapentake, or other division. 2 G. 3. c. 20. f. 42.

Proportioning in the several parishes or places.

2. And they may add together, whensoever they shall think necessary, the list for two or more parishes, tithings, or places; and proceed upon such lists added together, so as to make the choice of militia men by lot as equal and impartial as possible. 2 G. 3. c. 20. f. 44.

Two or more parishes or places may be joined.

3. And if a proper number of officers be then appointed (as is herein after mentioned), they shall appoint another meeting to be held within three weeks in the same subdivision, for allotting the men. 2 G. 3. c. 20. f. 42.

Third subdivision meeting appointed.

Notice to be given thereof.

4. And shall issue out an order (B) to the chief constable or other officer of the respective hundreds or other divisions, requiring them to give notice to the constable or other like officer of each parish, tithing, or place, of the number of men so appointed to serve for such respective parish, tithing, or place; and of the time and place of the next subdivision meeting, for chusing the men by lot. 2 G. 3. c. 20. f. 42.

IX. Ballotting.

Ballotting.

1. The deputy lieutenants and justices, at such third subdivision meeting so appointed as aforesaid, shall cause the men to be chosen by lot (except as hereafter excepted), out of the lists returned for the respective parishes or places. 2 G. 3. c. 20. f. 22.

Parishes may offer volunteers.

2. Provided, that if the churchwardens or overseers of any parish, tithing or place, or of two or more parishes, tithings or places so added together as aforesaid, shall with the consent of the inhabitants of the parish or parishes, township or townships, hamlet or place, taken at a vestry, or at any other meeting, for such parish, township, hamlet, or place, to be holden for that purpose, provide and produce any volunteer or volunteers, and such volunteers shall be approved by the said deputy lieutenants and justices; they shall be then and there sworn in and inrolled: and only so many shall be chosen by lot, as shall be wanted to make up the whole number to serve for such parish, tithing, or place, or parishes, tithings, or places. 2 G. 3. c. 20. f. 45.

Provided, that no such volunteer or substitute shall be admitted, who shall not be five feet four inches (at least) in height, and able and fit for service. 4 G. 3. c. 17. f. 3.

And if such churchwardens or overseers, shall give to such volunteers any sum or sums of money to serve in the militia; they may make a rate on the inhabitants, by the rate they now use for the relief of the poor; which rate being approved by two justices, the said churchwardens or overseers may collect such rate, and reimburse themselves such sums as they shall have paid with the consent of the said inhabitants as aforesaid; and the overplus, if any, shall be applied as part of the poor rate. And if any shall refuse to pay; one justice, on complaint thereof by such churchwarden or overseer, may levy the same by distress. —But no ballotted person, who shall have served himself, or by

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by substitute, three years, or who shall be then serving himself or by substitute, shall be liable to pay such rates.
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Provided always, that any person who shall think himself aggrieved by such rate as aforesaid, may appeal to the next sessions, in like manner as against the poor rate.
f. 46.

3. It shall not be lawful for any person (other than such Penalty of infam-
churchwardens and overseers) to contract or agree with ring.
any person, for any sum or other consideration, to indemnify or insure any person liable to serve in the militia, against serving therein; or in like manner to contract or agree to provide a substitute for any person who may be chosen by lot, or to pay the penalty of 10*l.* by this act laid on any person chosen by lot, who shall refuse or neglect to appear and take the oath and serve, or provide a substitute; and if any person shall offend herein, he shall, for every such contract or agreement forfeit 100*l.* half to the prosecutor, and half to the poor; and every such contract shall be void. 2 G. 3. c. 20. *f. 51.*

Provided, that nothing herein shall extend, to prevent any person chosen by lot, from procuring by himself or others, a proper person to serve as his substitute. *f. 52.*

Provided also, that this shall not extend to prevent persons of the same parish or place, or of two or more added together, from entering into subscriptions amongst themselves, for paying jointly for substitutes to be provided for such of the subscribers on whom the lot may fall.
f. 53.

4. And the said deputy lieutenants and justices, at such Fourth subdivi-
third subdivision meeting, shall appoint another meeting to
be held within three weeks in the same subdivision, for
swearing and inrolling the men. 2 G. 3. c. 20. *f. 42.*

5. And shall issue out an order (C) to the chief con- Notice thereof to
be given to the
personsballotted.
stables, to direct the constables or other officers of each parish or place, to give notice to every man so chosen to appear at such meeting; which notice shall be given, or left at his place of abode, at least seven days before such meeting. 2 G. 3. c. 20. *f. 42.*

X. Inlisting; and therein, of substitutes.

1. At the said fourth subdivision meeting, the constables shall attend, and make a return upon oath of the days Proof to be made
of notice to the
ballotted.
when such notice was served. 2 G. 3. c. 20. *f. 42.*

2. And

Swearing and in-
rolling.

2. And every person so chosen by lot shall, upon such notice, appear at such meeting, and there take the following oath, to be administered by one deputy lieutenant; and shall be inrolled to serve in the militia as a private militia man, for the space of three years, in a roll to be then and there prepared for that purpose; or shall provide a fit person (to be approved by the said deputy lieutenants and justices as aforesaid then met) to serve as his substitute; which substitute so provided, shall take the said oath, and sign on the said roll his consent to serve as his substitute, during the said term. 2 G. 3. c. 20. f. 42.

Which said oath shall be as follows: "I A. B. do sincerely promise and swear, that I will be faithful and bear true allegiance to his majesty king George, his heirs and successors; and I do swear, that I am a protestant, and that I will faithfully serve in the militia within the kingdom of Great Britain, for the defence of the same, during the time for which I am inrolled, unless I shall be sooner discharged." *id.*

Penalty of refusal.

3. And if any person so chosen by lot to serve in the militia (not being one of the people called quakers) shall refuse or neglect to take the said oath and serve in the militia, or to provide a substitute to be approved as aforesaid, who shall take the said oath, and sign his consent to serve as his substitute; every person so refusing or neglecting shall forfeit 10l. (D. E. F.) and at the expiration of three years be liable to serve again, or provide a substitute. 2 G. 3. c. 20. f. 42.

Which said forfeiture shall be applied in the first place, by the deputy lieutenants and justices as aforesaid within their respective subdivisions, in providing a substitute for the person who shall have paid such penalty; and if any part of such penalty shall remain, after such substitute shall be provided, the same shall be paid to the colonel or commanding officer, and be applied as part of the regimental stock. f. 93.

And where the goods of such offender shall not be sufficient to answer the distress, he shall be committed (as is hereafter specified) to the common gaol, for any time not exceeding three months. f. 128.

Officers beating
up for volunteers.

4. If any serjeant, drummer, or fifer, serving in the militia, shall beat up for volunteers; the person who shall give orders for so doing, shall, on proof of such beating up and such orders given, upon oath before one justice, forfeit 20l. half to the person who shall make information thereof, and the other half to be applied as part of the regimental

regimental

regimental stock: And if such serjeant, drummer, or fifer, shall refuse to declare upon oath before such justice, from whom he received such orders; such justice may commit him to the house of correction, for any time not exceeding three months. 2 G. 3. c. 20. f. 55.

5. No officer shall, during the time the regiment, battalion, or independent company shall be out of the county or place to which they belong, engage any person to serve in such regiment, battalion, or independent company, unless such person so engaged shall be a native of such county. 2 G. 3. c. 20. f. 56. Officers hiring men.

6. Every militia man shall, if he changes the place of his abode from one parish or place, to another parish or place, the militia whereof shall serve in the same regiment or battalion, continue to serve in such regiment or battalion for the place from whence he removed, and shall not occasion a vacancy for such parish or place, but shall be trained, exercised, and paid by the officer of the company to which the militia of such parish to which he removed shall belong; and every militia man, who shall change the place of his abode from one county to another county, or from one parish or place to another parish or place, the militia whereof shall serve in different regiments or battalions; such person shall serve, upon the first vacancy, in such regiment or battalion until his service be completed. And he shall before he change the place of his abode, give notice thereof to three deputy lieutenants, or two deputy lieutenants together with one justice, or one deputy lieutenant together with two justices, at some subdivision meeting, or to one deputy lieutenant; who shall give to him a certificate of the time he shall have served from his inrollment; and if such certificate shall have been given by one deputy lieutenant only, he shall certify the same to the next meeting within the subdivision; and such militia man shall produce the said certificate to the deputy lieutenants and justices, at the next meeting for the subdivision wherein he shall then dwell, or to one deputy lieutenant residing near, who shall certify the same to the next subdivision meeting. And if any militia man, so changing his place of abode, shall not give notice, and produce his certificate as aforesaid; he shall, on conviction upon oath before one justice, forfeit 20 s. and if he shall not immediately pay the same, it shall be levied by distress; and for want of sufficient distress, he shall be committed to the house of correction for any time not exceeding one month. 2 G. 3. c. 20. f. 67. Militia man changing his place of abode.

And

And the clerk to the subdivision meeting shall, upon notice given by any militia man of changing the place of his abode, and of a certificate granted him as aforesaid, forthwith give notice thereof to the clerk of the meeting for the subdivision to which the parish or place where he then resides shall belong. *f. 68.*

Inlisting into the militia elsewhere.

7. If any person, after being inrolled in the militia of one county or place, shall during such service engage and be inrolled to serve in the militia of any other county or place; he shall, on conviction before one justice of the county in which he shall last enter into the said militia, forfeit any sum not exceeding 10*l.* and if he shall not pay immediately, the justice shall commit him to the common gaol of the county or place where he shall have been so convicted, for any time not exceeding three months, or unless he shall sooner pay the penalty. 4 G. 3. c. 17.

f. 4.

Inlisting into the militia regulars.

8. If any person, sworn and inrolled in the militia, shall inlist in his majesty's other forces; the overseer of the poor of the place for which he serves, shall, as soon as it comes to his knowledge, acquaint the adjutant therewith; who shall forthwith apply to a justice of the peace for the place for which such person is inrolled, to issue his warrant to apprehend such militia man; and such adjutant may send the serjeants and drummers to search for and apprehend him by virtue of such warrant: And any justice for any county or place where such militia man shall or may be found, shall indorse the said warrant (on application made to him for that purpose) and cause the said militia man to be apprehended and brought before him, or some other justice for the county or place where such militia man shall be apprehended: And if it shall appear upon oath to such justice, that the said person was inrolled to serve in the militia, at the time of his inlisting into his majesty's other forces, and did not acquaint the officer inlisting him therewith; such justice shall commit him to the house of correction of the place where he shall be so apprehended, there to be kept to hard labour not exceeding 3 months. And such inlisting shall be void, unless the officer with whom he inlisted shall within 20 days pay to the overseer where such man served the sum of 5*l.* which sum shall be laid out by such overseer, towards providing another fit person to serve for three years in the place of such militia man so inlisted into his majesty's other forces. And if the money so received shall not be sufficient to provide another fit person to serve

as aforesaid; such overseer shall be reimbursed such further sum as he shall pay for providing such person, in the same manner as is directed for providing volunteers. And if the money so received shall exceed the sum expended in providing such person, the surplus shall be accounted for by such overseer, as so much money in his hands for the purpose of providing volunteers. 2 G. 3. c. 20. f. 54. 5 G. 3. c. 36. f. 6.

9. If any servant, hired by the year or otherwise, shall serve in the militia; it shall be lawful for one justice, on complaint upon oath by such servant, to order so much of his wages as shall appear to such justice to be due, to be immediately paid him by his master or employer, in proportion to the service he has performed; and shall proceed therein as is directed by the statute of 20 Geo. 2. c. 29. 2 G. 3. c. 20. f. 50. Servant ballotted and sworn, to be paid his wages.

10. Provided always, that no militia man, having served as a substitute, shall by such service be excused from serving for himself, when he shall be chosen by lot. 2 G. 3. c. 20. f. 69. Substitute not discharged from serving again.

11. But no person, having served personally or by substitute three years in the militia, shall be obliged to serve again, until by rotation it comes to his turn. 2 G. 3. c. 20. f. 78. Principal discharged.

And when any substitute shall, after having been approved as aforesaid, before the expiration of the term for which he was to serve, die, or be appointed a serjeant, or be legally discharged; the person for whom he served shall not be obliged to serve himself, or to find another; but such vacancy shall be filled up, as in case of vacancies occasioned by the death or discharge of persons serving for themselves. f. 61.

XI. Forming the militia into regiments and companies.

1. Within one month after the rolls are so returned from the deputy lieutenants and justices as aforesaid (to the second general meeting), there shall be a third general meeting; at which, they shall form and order the militia into regiments; consisting, where the number of militia men will admit the same, of twelve, but in no case of less than eight companies, of 80 men at the most, and 60 men at the least, of persons living as near to each other as conveniently can be; and shall post to each company Into regiments.

pany proper officers commissioned and qualified as afore-
said; that is to say, the field officers of a regiment shall
be one colonel, one lieutenant colonel, and one major;
and where the number of private men shall amount to
five companies, or to any number under eight companies,
such militia shall be formed into a battalion, with one
lieutenant colonel, and one major, and no other field
officer; (or where his majesty's lieutenant shall serve as
colonel, then there shall be no lieutenant colonel, and his
majesty's said lieutenant in such case shall be intitled to
no other pay than that of a lieutenant colonel; 2 G. 3. c.
20. f. 28, 29.) in like manner, where the number of pri-
vate men shall amount to three companies, or to any
number under five companies, such militia shall be formed
into a battalion with one lieutenant colonel or major, and
no other field officer: and in each regiment or battalion of
militia a number of captains, lieutenants, and ensigns,
equal to the number of companies in such regiment or
battalion (grenadier companies excepted, wherein there
shall be one captain and two lieutenants. f. 95.)

Independent
companies.

2. Where the number shall not be sufficient to form a
regiment or battalion; they shall be formed into indepen-
dent companies, each company to consist of 80 private
men at the most, and 60 private men at the least, with
one captain, one lieutenant, and one ensign, to each
company: and his majesty may join together any number
of such independent companies, and therewith form a bat-
talion, or incorporate them with any regiment or batta-
lion, but so as the number of companies in such regiment
or battalion do not exceed, or fall short of, the number
of companies of which a regiment or battalion is herein
before allowed to consist. 2 G. 3. c. 20. f. 97.

XII. Proceedings where the militia have been already raised.

General meet-
ing.

1. Where the militia has been, or shall be raised, there
shall be a general meeting yearly on the last tuesday in
May, or the last tuesday in October. 2 G. 3. c. 20. f. 57.

And if there shall happen to be no meeting on such day;
his majesty's lieutenant together with two deputy lieuten-
ants, and on the death or removal or in the absence of
his majesty's lieutenant three deputy lieutenants, when
and as often as they shall find necessary, may summon or
cause to be summoned a general meeting, on a day to be
fixed by such summons; of which day and place, notice

shall be given in the *London* gazette, and also in any weekly paper usually circulated in such county, 14 days at least before the holding of such meeting. 4 G. 3. c. 17. f. 1.

2. At which general meeting, they shall appoint the times and places for holding four or more subdivision meetings in each year; and shall at the said general meeting cause new lists to be made and returned to the first of the said subdivision meetings, in the same manner as in places where the militia has not been raised. 2 G. 3. c. 20. f. 57.

And it shall be lawful, at a general meeting to be held after reasonable notice thereof given, to change or alter any subdivision meeting, whenever they shall find it convenient so to do. f. 65.

Also it shall be lawful, for three deputy lieutenants, or two deputy lieutenants with one justice, or one deputy lieutenant with two justices, upon any vacancy, by death or otherwise, to appoint a subdivision meeting, for the filling up such vacancies, giving seven days notice thereof. f. 60.

Provided, that in order to save the trouble of appointing subdivision meetings every year, in the several counties and places aforesaid; the subdivision meetings therein now appointed shall continue until the same shall be altered at some general meeting. f. 66.

3. And where the militia has been already formed and ordered, his majesty's lieutenant together with two deputy lieutenants, shall, if the said militia shall be then disembodied, within two months after passing this act reform the same, according to the rules by this act prescribed for the first forming and ordering the militia; and if the same shall be embodied, then within two months after it shall be disembodied and returned to the respective counties. 2 G. 3. c. 20. f. 96.

Forming into regiments and companies.

4. If at any of the subdivision meetings, any private militia man shall shew just cause for his discharge, and being embodied, shall likewise produce a regular discharge from his commanding officer; the deputy lieutenants and justices shall and may discharge him; and in the stead of the persons so discharged, and also if there shall be any other vacancy by death or otherwise, they shall, after having amended the lists in the same manner as is directed where the militia has not been raised, cause a like number to be chosen by lot, out of the lists of such places where the vacancies shall happen, unless such militia men shall

be

be otherwise provided as is by this act directed. Which persons so chosen, or their substitutes provided and approved as aforesaid, shall take the oath required by this act to be taken, and every person so chosen shall be inrolled, and every substitute so provided shall subscribe his consent to serve, and shall serve for the space of three years, subject to the directions, provisions, and penalties in this act contained. 2 G. 3. c. 20. *f.* 59.

Provided, that if any militia man shall, during the time that the regiment or battalion shall be embodied, be discharged by the commanding officer; such discharge shall be sufficient to prevent such man from being liable to be apprehended as a deserter, but shall not extend to cause another man to be chosen in his place, unless he be likewise regularly discharged by the deputy lieutenant or deputy lieutenants and justices as aforesaid. *f.* 63.

For the purposes of swearing and inrolling, it shall be lawful for any one deputy lieutenant, at any place in the subdivision he usually acts in, to swear and inroll any substitute to serve for any place within his subdivision; provided he produce to such deputy lieutenant a certificate under the hands and seals of two other deputy lieutenants, or of one justice with one deputy lieutenant, or of two justices acting in or residing near the same subdivision, certifying that they have seen and do approve of such substitute as a proper person to serve in the militia: Provided also, that the clerk belonging to such subdivision shall and do attend with the roll, at such swearing and inrolling. *f.* 62.

And all such militia men, whose time of service shall be near expiring, during the time they shall be absent from the county or place to which they belong, shall be returned by the commanding officer to the county or place for which they served, so as that they may reach the said county by the expiration of their term. *f.* 64.

XIII. Training and exercise.

At what times.

I. The militia shall be trained and exercised in manner following; that is to say, by regiment or battalion twice in a year, 14 days at each time, or once in a year, for 28 days together, as shall be directed by his majesty's lieutenant and two deputy lieutenants, and on the death or removal or in the absence of his majesty's lieutenant, by three deputy lieutenants, at such time and place, as shall be least inconvenient to the publick, to be by them appointed at a general meeting: And during such time, all the provi-

sions in any act for punishing mutiny and desertion and for the better payment of the army and their quarters, shall extend to and take place in respect of the officers and private men of every regiment or battalion; but not to extend to life or limb. 2 G. 3. c. 20. s. 99.

2. And notice of the time and place shall be sent by the clerk of the general meeting to the chief constables, with directions to forward the same to the constables or other officers of the several parishes or places; who shall cause such notice to be fixed on the doors of their churches or chapels respectively; or if any place being extraparochial, shall have no church or chapel belonging to it, on the door of the church or chapel of some parish or place thereto adjoining. 2 G. 3. c. 20. s. 103.

Notice of the
time and place.

3. And all such militia men shall duly attend, at the times and places of exercise so to be appointed. 2 G. 3. c. 20. s. 103.

Due attendance
there.

And if any militia man (not labouring under any infirmity incapacitating him) shall not appear; he may be apprehended, without any previous summons by warrant from one justice of the same county or place, or of any other county or place within which such offender shall be found, on oath made before such justice, that such militia man did not appear at the time and place aforesaid, and on producing also to the justice a certificate signed by the clerk of the subdivision meeting, that it appears to him by the roll in his custody, that the said defaulter is, or at the time of the offence committed was a militia man for the county wherein he ought to have appeared as aforesaid, mentioning in such certificate the date of his inrollment; and upon proof on oath made before the said justice of the handwriting of the said clerk: And if any militia man so apprehended as aforesaid, shall not prove to the satisfaction of the said justice, that he did at the time appointed for such appearance labour under some infirmity incapacitating him; or that he had then changed his place of abode, and removed upon notice and certificate as is above directed, into the subdivision wherein he shall be dwelling at the time of his being so apprehended; or that he, at the time of such default of appearance, was inrolled also to serve into the militia of some other county or place, and hath thereby forfeited and paid the penalty of 10l. indicted for that offence by the 4 G. 3. c. 17; he the said defaulter (not making satisfactory proof as aforesaid of one or other of the said three causes of excuse) shall stand immediately convicted by the said justice before

whom he shall be brought (whether the said justice be of the same or of some other county or place); and the said justice shall then require and demand of him the immediate payment of the penalty of 20 l; and on refusal or neglect to pay the same into the hands of the said justice, or of such person as he shall then direct, for the use of the regiment or battalion wherein such defaulter was inrolled, to serve as part of the common stock of such regiment or battalion, the said justice shall commit him to the common gaol of the county or place where he shall be so convicted, there to remain without bail or mainprize for six months, or until he shall have paid the said penalty of 20 l. 2 G. 3. c. 20. f. 103. 5 G. 3. c. 34. f. 15.

Provided, that no officer or private man shall be liable to any penalty or punishment, on account of his absence during the time he shall be going to vote at any election of a member to serve in parliament, or returning from such election. 2 G. 3. c. 20. f. 111.

Deserting during
the time of exer-
cise.

4. If any militia man, having joined the corps, shall desert during the time of annual exercise, and not be apprehended during the time of such exercise; he shall incur the penalty and be subject to the punishment above inflicted on militia men not joining their corps. 4 G. 3. c. 17. f. 6.

And one justice, in any county or place where such deserter shall be found, may proceed against him in the same manner, and execute the like powers, as in the case of not appearing at the annual exercise. 5 G. 3. c. 34. f. 16.

Carriages.

5. And when the militia shall be called out to be trained and exercised, it shall be lawful for a justice of the peace, being duly thereunto required by an order from his majesty, or from his majesty's lieutenant, or a deputy lieutenant, or from the colonel or other chief commission officer upon the place, of any regiment company or detachment of militia, to issue out his warrant under his hand, to the chief constables, petty constables or other officers of the hundreds, parishes, tithings or places, from, through, near or to which, any such regiment or company of militia men, or any detachment thereof, shall be ordered to march, requiring them to make such provision for carriages of the arms, clothes, accoutrements, powder, match, bullets, or other warlike materials, with able men to drive such carriages, as is and are mentioned in the said order; but in case such sufficient carriages and men cannot be provided within any such county, riding, hundred, rape, lath,

lath, wapentake, division, parish, tithing, or place; then the next justice shall, upon such order as aforesaid being shewn unto him, issue his warrant to the chief constables, petty constables, or other such officers of the next county, riding, hundred, rape, lath, wapentake, division, parish, tithing, or place, for the purposes aforesaid, to make up such deficiency of carriages. 2 G. 3. c. 20. s. 123.

And such lieutenant, deputy lieutenant, colonel, or other chief commission officer upon the place, who by virtue of the said warrant from the said justice shall demand such carriages of such officer as aforesaid, shall at the same time pay down to him in hand, for the use of the person who shall provide such carriages and men, the sum of 1s. for every mile any waggon with five horses shall travel; and 1s. for every mile any wain with six oxen, or with four oxen and two horses, shall travel; and 9d. for every mile any cart with four horses shall travel; and so in proportion for carriages drawn by a less number of horses or oxen: for which the officer shall give a receipt. *id.*

And such chief constable, petty constable, or other officer, shall order and appoint such person or persons having carriages within their respective divisions, as they shall think proper, to provide and furnish such carriages and men according to such warrant; which persons so ordered shall provide and furnish the same accordingly, for one day's journey, and no more. *id.*

And in case the said chief constables, petty constables, or other officers, shall be at any charges for such carriages, over and above what is so received by them of the said lieutenant, deputy lieutenant, colonel, or other chief officer as aforesaid; such overplus shall be borne by each county, riding or place, where such additional expence shall be incurred, and be repaid to them without fee by the treasurer out of the publick stock. *id.*

And if any such chief constable, constable, or other officer, shall wilfully neglect or refuse to execute such warrant; or if any person appointed by such chief constable, constable, or other officer, to provide or furnish any such carriage and man, shall wilfully neglect or refuse to provide the same; he shall forfeit a sum not exceeding 40s. nor less than 20s. to the use of the poor of the parish or place where such offence shall be committed: the same to be heard and determined by two justices; and the penalty to be levied by their warrant by distress. *id.*

6. It shall be lawful for the mayors, bailiffs, constables ^{Billeting.} and other chief magistrates and officers of cities, towns, parishes,

parishes, tithings, villages, and other places, and in their default or absence for a justice of the peace inhabiting in or near such place, and for no others; and they are hereby required, to quarter and billet the officers and private men, at the times when they shall be called out to annual exercise, in inns, livery stables, alehouses, victualling houses, and all houses of persons selling brandy, strong waters, cyder, wine, or metheglin, by retail; on application to them made by the lieutenant, or by the colonel or commanding officer. 2 G. 3. c. 20. §. 100.

In like manner, the serjeants, drummers, and fifers, shall be billeted; and the occupiers of the houses where they shall be billeted, shall provide for them, at such times for which no provision has by law been made for that purpose, convenient lodgings only. §. 101.

Stoppages of pay
during the time
of exercise.

7. And whereas it would be conducive to the preservation of order and discipline during the time of annual exercise, of great convenience to the corporals and private men in supplying them with necessaries, and of essential utility to their families, if the captains or commanding officers were enabled to stop a limited part of the daily pay of such corporals and private men; it is enacted, that it shall be lawful for every captain or commanding officer of the militia, to put the corporals and private men of his company under stoppages, not exceeding 6d. a day, for the purposes aforesaid: Provided, that such captain or commanding officer shall account with the said corporals and private men for the said stoppages, before they shall be dismissed from the said annual exercise; having first deducted what shall have been laid out for them for necessaries and repair of arms damaged by their neglect. 4 G. 3. c. 17. §. 7.

Arms and
clothes to be
deposited.

8. All muskets delivered for the service of the militia shall be marked with the letter M, and the name of the county or place to which they belong. 2 G. 3. c. 20. §. 108.

And the captain of each company shall keep in his own custody, or leave and deposit with the several serjeants belonging to his company, or with such persons as the said captain shall appoint, the arms, clothes and accoutrements provided for his company; and the churchwardens of every parish or place where the said arms, clothes and accoutrements are so deposited, or one of them, shall provide at the expence of such parish or place, a chest, in which such captain, serjeant or other person so appointed as aforesaid shall keep the said arms in some dry part of his house or dwelling, under lock and key; and another chest

chest in which he shall keep under lock and key the said clothes and accoutrements: and the serjeant or other person appointed to train and discipline the men, shall take care that after exercise every militia man shall clean and return his arms, clothes and accoutrements, to his captain, or to such person as shall be appointed as aforesaid to receive the same. *f. 104.*

And if the serjeant, or other person appointed by any captain of the militia to receive and keep in his custody the said arms, clothes and accoutrements, shall not complain within three days to a neighbouring justice, of any militia man's not having returned his arms, clothes and accoutrements as before directed; he shall, on conviction before one justice, forfeit 20 s. which if he shall not immediately pay, the same shall be levied by distress by warrant of such justice. *f. 112.*

Provided, that his majesty's lieutenant, or in his absence three deputy lieutenants may by their warrant employ such persons as they shall think fit, to seize and remove the arms, clothes and accoutrements belonging to the militia, whenever such lieutenant or deputy lieutenant shall judge it necessary to the peace of the kingdom; and to deliver the same into the custody of such persons, as the said lieutenant or deputy lieutenants shall appoint to receive the same, for the purposes of this act. *f. 105.*

And if any serjeant, or any other person intrusted by the captain, with the custody of any arms, clothes or accoutrements belonging to the militia, shall deliver any of them out, unless for exercising the men, or by the command of his superior officer; it shall be lawful for two justices, to commit him to the common gaol, for any time not exceeding six months. *f. 106.*

9. And if any militia man shall sell, pawn or lose any of his arms, clothes or accoutrements; he shall, on conviction before one justice, forfeit a sum not exceeding 3 l. and if he shall not immediately pay the same, such justice shall commit him to the house of correction for one month, and until satisfaction shall be made for the same; and if he shall not be of ability to make such satisfaction, then for the space of three months. 2 G. 3. c. 20. *f. 109.*

And if any militia man shall refuse or neglect, to return his arms, clothes and accoutrements in good order, to his captain, or to such person as shall be appointed as aforesaid to receive the same, whenever demanded; he shall, on conviction before one justice forfeit 10 s. and if he shall not immediately pay the same, such justice shall commit

Pawning or
losing the same,

(New) *Militia.*

him to the house of correction for any time not exceeding 14 days. *f. 109.*

And if any person shall knowingly and willingly buy, take in exchange, conceal or otherwise receive, contrary to the true intent and meaning of this act, any arms, clothes or accoutrements belonging to the militia, upon any account or pretence whatsoever; he shall, on conviction before one justice, forfeit 5*l.* and if he shall not immediately pay the same, the said justice shall levy the same by distress; and for want of distress, shall commit him to the common gaol for three months, or shall cause him to be publicly whipt, at the discretion of such justice. *f. 110.*

Penalty on non-commission officers not doing their duty.

10. And the serjeants shall receive all their military orders with respect to training the militia men under their care, from the adjutants, and their superior officers; and shall report from time to time all crimes and misdemeanors of the several militia men under their command, to their adjutant or superior officers, or to any two deputy lieutenants, or to some civil magistrate, as the case shall require. 2*G.* 3. c. 20. *f. 113.*

And if any non-commission officer shall be negligent in his duty, or insolent, or disobedient to the orders of the adjutant or other his superior officer, and be thereof convicted as aforesaid upon the oath of the adjutant or other superior officer before one justice; he shall forfeit any sum not exceeding 30*s.* at the discretion of such justice; and if he shall not immediately pay the same, the said justice shall commit him to the house of correction for 14 days; and his majesty's lieutenant may discharge such non-commission officer if he shall think fit. *f. 114.*

Returns to be made to the lieutenant.

11. And the colonel or commanding officer of every regiment or battalion of unembodied militia shall, as often as they shall be called out to exercise, return to his majesty's lieutenant a true state of such regiment or battalion. 2*G.* 3. c. 20. *f. 102.*

XIV. Cloathing and pay.

When to issue.

1. No pay, arms, accoutrements, or clothing shall be issued, and no adjutant or serjeant shall be appointed, until it shall appear by a return signed by his majesty's lieutenant, or, on the death or removal or in the absence of his majesty's lieutenant, by three deputy lieutenants, that three fifths of the militia men have been inrolled, and three fifths of the officers have taken out commissions. 2*G.* 3. c. 20. *f. 107.*

2. The

2. The pay of the embodied militia will be specified, ^{In what manner} when we come to treat of their being drawn out into actual ^{and proportion.} service.

The pay of the unembodied militia hath been directed by annual acts for that purpose: The last of which (viz. 5 G. 3. c. 34.) is as followeth; Whereas the sum of 80000l. hath been granted to his majesty, for defraying the charge of pay and cloathing for the militia, for one year from March 25, 1765; it is enacted, that in every place where the militia is or shall be raised, the receiver general of the land tax for such place shall issue and pay as followeth: — For the pay of the said militia for 4 calendar months in advance, at the rate of 6 s. a day for each *adjutant*; 1 s. for each *serjeant*, with the addition of 2 s. 6 d. a week for each *serjeant major*; 6 d. a day for each *drummer*, with the addition of 6 d. a day for each *drum major*; and at the rate of 6 d. a month for each private man and drummer for defraying *contingent expences*, one penny whereof to be applied to the hospital expences when they are out upon their annual exercise; and for half a year's salary for the *clerk of the regiment or battalion* at the rate of 50 l. a year; and to the *clerk of the general meetings* at the rate of 5 l. 5 s. for each meeting; and to the several *clerks of the subdivision meetings* at the rate of 1 l. 1 s. for each meeting; and also for *cloathing*, after the rate of 3 l. 10 s. for each *serjeant*, and 2 l. for each *drummer*, with the addition of 1 l. for each *serjeant major* and *drum major*; and with respect to the private militia men, where they have been embodied, or having not been embodied, have not been cloathed within three years, at the rate of 1 l. 10 s. for each private man. — Provided nevertheless, that in any place where pay has not yet been issued, no pay shall be issued, until his majesty's lieutenant, or in his absence three deputy lieutenants, shall have certified to the commissioners of the treasury, and to the receiver general of the land tax, that three fifths of the number of private men have been inrolled, and that three fifths of the proportion of their commission officers have accepted their commissions and entred their qualifications.

All which sums of money afore said (except what shall be due to the clerks of the meetings) shall, where the militia has never been embodied, be paid by the receiver general into the hands of the clerk of the regiment or battalion, on his producing his warrant of appointment to such office under the hand and seal of his majesty's lieutenant; and where the militia has been embodied, into the hands

(New) Militia.

of the clerk of the regiment or battalion, on his producing his warrant of appointment to such office under the hand and seal of the colonel, or, where there is no colonel, of the commanding officer, notwithstanding such militia shall have been disembodied; and where the militia shall be formed into independent companies, such sums shall be paid by the receiver general into the hands of the respective captain of such independent company, or to such person as such captain shall authorize to receive the same.

And the said receiver general shall also, within 14 days after the expiration of the third calendar month from the time of the said first payment, make a second payment for four calendar months in advance; and, within 14 days after the expiration of the third calendar month from the time of the said second payment, make a third payment for four calendar months in advance; for the pay and contingent expences of the militia, and for the allowances to the regimental or battalion clerk: and the receipt of such clerk, and of such captain of an independent company or of the person authorized by him as aforesaid to receive the same, shall be a sufficient discharge to the receiver general.

And the clerk of the regiment or battalion shall forthwith after the receipt of such sums as aforesaid, pay or cause to be paid one calendar month's pay in advance to the adjutant; and to the captain or commanding officer of each company two months pay in advance for the serjeants, drummers, and the contingent expences of his company, out of which said contingent money each captain shall pay to the commanding officer one penny a month for each private man and drummer for the expences of the hospital; and also to the commanding officer of the company to which the serjeant major and drum major shall belong, two months pay in advance for such serjeant and drum major; and so from time to time so long as any money on that account shall remain in his hands.

Which pay, every such captain or commanding officer shall distribute to each person belonging to his company, as it shall become due; and shall once in every year give in to the clerk of the regiment or battalion, an account of the several payments he shall have made in pursuance of this act, according to the following form:

County

County of — Dr.	Per Contra — Cr.
1. s. d.	1. s. d.
To cash received of Mr. — regimental or battalion clerk, or receiver general (as the case shall be) for two months pay in advance.	Paid serjeant —
	for — days pay
	from the — day
	of — to the
	— of —
	following.
	Ditto as serjeant major.
	Paid —
	drummer —
	days at 6 d. from
	the — of —
	to the — of
	— following.
	Ditto as drum major - - -
	Two months contingencies for
	— men and
	two drummers
	at 6 d. per month
	each - - -

And shall pay back to the said clerk or to the receiver general, as the case shall be, the surplus (if any) remaining in his hands, except the money by this act allowed for contingent expences, which shall once in every year be accounted for, by the captain of each company respectively, in manner aforesaid; and the balance thereof shall be by him paid into the hands of the clerk of the regiment or battalion to be applied to the general use of the said regiment or battalion, as the field officers and captains thereof, or the greater part of them, shall direct.

And the captain of each independent company shall distribute to each person belonging to his company intitled thereto, such money as he shall receive by virtue of this act; and the said money allowed for the contingent expences of each independent company of militia, shall be respectively applied to the particular use of such independent company by the captain thereof.

And the said regimental or battalion clerk may retain to his own use, out of the money so by him received, such further sums as shall complete the allowance herein before made for his salary.

And shall also pay to such person as shall produce an order from the commanding officer of such regiment or battalion, such sums as shall be due on account of the cloathing

ing of the said Regiments or battalions, not exceeding the rates herein before mentioned.

And whenever his majesty's lieutenant, or any three or more deputy lieutenants, shall have fixed the days of exercise *, they shall, as soon as may be, certify the same to the receiver general, specifying the number of men, and the number of days they are to be absent from home on account of such exercise; which receiver general shall, within 14 days after the receipt of such certificate, pay to the clerk of the regiment or battalion, at the rate of 7 s. 6 d. a day for each captain, and at the rate of 3 s. 6 d. a day for each lieutenant, and of 3 s. a day for each ensign; and also at the rate of 1 s. a day for each private man, with the addition of 6 d. a day for each corporal, for the number of days they shall be absent on account of exercise; and in such counties where there shall be independent companies only, the receiver general shall pay to the captains of the independent companies, at the rate of 7 s. 6 d. a day for each captain, and so of the rest; and the said regimental or battalion clerks shall forthwith pay to each captain of the said regiments or battalions the proportion of pay belonging to each captain, and likewise the pay belonging to their respective companies.

And each captain shall make up an account of all money by him received on account of such exercise, according to the following form:

County of — Dr.			Per Contra — Cr.		
l. s. d.			l. s. d.		
To cash received of — the regimental or battalion clerk, or receiver general, for — days pay of — men —	}		Paid — militia men —		
	}		days — — —		
	}		Paid additional		
	}		pay to — corporals — days		

Which

* Here seems to be a mistake. The days of exercise are to be fixed (as is above expressed) by his majesty's lieutenant and two or more deputy lieutenants, and on the death or removal or in the absence of his majesty's lieutenant by three or more deputy lieutenants, at a general meeting. This clause supposeth, that his majesty's lieutenant alone, or any three or more deputy lieutenants, may appoint such time. By the statute of the 3 G. 3. c. 10. power was given for that particular year, by reason of inconveniencies that might happen from waiting until the time then limited for the general meeting, to his majesty's lieutenant on or before the 30th of April to fix the time for training and exercise; and

if

Which account shall be signed by such captain, and countersigned by the commanding officer; and the said captain shall, within ten days after the time of such exercise, deliver such account, and pay the balance, (if any), to the regimental or battalion clerk; or if captain of an independent company, to the receiver general.

Provided always, that where any regiment, battalion or independent company of militia, shall be embodied and called out into actual service, and thereby the officers and private men shall be intitled to the same pay as the officers and private men in his majesty's other regiments of foot receive; all pay from the receiver general, whether to the adjutant, serjeants, private militia men, or others, and all money allowed as aforesaid for contingent expences, and also the allowance to the clerk of the regiment or battalion, shall during such time of actual service cease and not be paid.

And the receiver general shall pay to the clerk of the general meetings his allowance, at the rate of 5l. 5s. for each meeting; on his producing an order for that purpose from his majesty's lieutenant, or from three deputy lieutenants assembled at a general meeting.

And shall also pay to each and every the clerks of the subdivision meetings, their several allowances at the rate of 1l. 1s. for each meeting; on his or their producing an order or orders respectively, from one or more deputy lieutenants assembled in the several subdivision meetings: which order shall be a sufficient discharge to the receiver general, and be allowed in his account.

Provided always, that the regimental or battalion clerk shall give security to the receiver general, by bond to his majesty, in penalty of one half of the sum required for the whole year's charge of the regiment or battalion, for duly answering and paying such sums as he shall from time to time receive, and for duly accounting for the same, and for the performance of his trust; which bond shall be lodged with the receiver general, and by him in case of failure shall be put in suit.

if he should not within that time fix the same, then three or more deputy lieutenants were to do it. And in that case these words were proper — "Whenever his majesty's lieutenant, or any three or more deputy lieutenants, shall have fixed the days of exercise" — But this was restricted to that year only. And these words in the present act are transcribed from the act in that year; though the circumstances are very different.

And

And the said clerk of the regiment or battalion, and the captain of every independent company of militia, shall between Mar. 25. and June 24. 1765. deliver to the receiver general a fair account in writing, of all money by him received and disbursed for the service of the preceding year in pursuance of this act, with proper vouchers for the same; and shall pay back to him any surplus that shall then be in his hands: which said accounts, signed by such clerk, or such captain of an independent company respectively, shall be transmitted by the receiver general into the office of the auditor of the revenue.

And all penalties, costs and charges of suit, and sums of money for which any person is by this act made answerable, may be recovered in any of his majesty's courts of record at *Westminster*.

And no fee or gratuity shall be given or paid, for any warrant or sum of money, which shall be issued in pursuance of this act.

And any person being on half pay, and serving in the militia, may receive the subsistence money payable to captains, lieutenants or ensigns, and it shall not prevent his receiving his half pay; he taking the following oath before a justice, "I *A. B.* do swear, that I had not between — the — any place or employment of profit, civil or military, under his majesty, besides my allowance of half pay as a reduced — in — late regiment of — save and except my subsistence as a lieutenant or ensign [as the case may be], for serving in the militia of the county of —." And the taking the said oath shall intitle him to receive his half pay, without taking any other oath.

[Note, in the form of the oath above, the word *captain* seems to have been omitted by mistake, for the context seems to require that the words should run thus—*save and except my subsistence as a captain, lieutenant, or ensign.*—For by this present act, pay is allowed to the captains, as well as to the lieutenants and ensigns.]

XV. Drawn out into actual service.

To be drawn out
in case of invasion
or rebellion.

1. In case of actual invasion, or upon imminent danger thereof, or in case of rebellion, it shall be lawful for his majesty (the occasion being first communicated to parliament, if the parliament shall be then sitting; or declared in council, and notified by proclamation, if no parliament shall be then sitting or in being) to order his lieutenants, and

and on their death or removal or absence three deputy lieutenants, with all convenient speed, to draw out and embody all the regiments and battalions of militia of their respective counties, ridings or places, already raised and not yet embodied, or herein appointed to be raised and trained, or so many of them as he shall judge necessary, in such manner as shall be best adapted to the circumstances of the danger. 2 G. 3. c. 20. f. 116.

2. And if at such time the parliament shall happen to be separated, by such adjournment or prorogation as will not expire within fourteen days; it shall be lawful for his majesty to issue a proclamation, for the meeting of the parliament, upon such day as he shall thereby appoint, giving fourteen days notice of such appointment: and the parliament shall accordingly meet upon such day, and continue to sit and act, in like manner to all intents and purposes, as if it had stood adjourned or prorogued to the same day. 2 G. 3. c. 20. f. 117.

Parliament then
to meet.

3. And in such case, his majesty may direct the said forces to be put under the command of such general officers as he shall appoint. 2 G. 3. c. 20. f. 116.

To be put under
the command of
general officers.

4. And direct them to be led by their respective officers, into any parts of this kingdom, for the suppression of such invasions and rebellions. 2 G. 3. c. 20. f. 116.

And led to any
part of the king-
dom.

5. Provided, that neither the militia of this kingdom, nor any corps, detachment or draught thereof shall, on any account, be transported or carried out of the island of Great Britain. 2 G. 3. c. 20. f. 125.

But not to go
out of the king-
dom.

6. And the said officers of the militia, and private militia men, shall from the time of their being drawn out and embodied as aforesaid, and until they be returned again to their respective parishes or places of abode, remain under the command of such general officers; and shall be intitled to the same pay as the officers and private men in his majesty's other regiments of foot receive, and no other; and the officers of the militia shall, during such time, rank with the officers of his majesty's other forces of equal degree with them, as the youngest of their rank; and during such time as aforesaid, all the provisions contained in any act of parliament then in force for punishing mutiny and desertion, and for the better payment of the army and their quarters, shall extend to the officers and private militia men (except only as to such particulars as are or shall be otherwise specially provided for by any act or acts of parliament for regulating the militia forces); and when they shall be returned again to their respective parishes

To be subject to
the acts against
mutiny and de-
sertion.

parishes or places of abode, they shall be under the same orders and directions only, as they were before they were drawn out and embodied as aforesaid. 2 G. 3. c. 20. s. 116.

Provided, that no officer serving in the militia, shall sit in any court martial upon the trial of any officer or soldier serving in any of his majesty's other forces; nor shall any officer serving in any of his majesty's other forces, sit in any court martial upon the trial of any officer or private man serving in the militia. s. 121.

Penalty of not appearing.

7. And his majesty's lieutenant, and on the death or removal or in the absence of his majesty's lieutenant three deputy lieutenants, shall issue their orders to the chief constables, with directions to forward the same immediately to the constables or other officers of the several parishes or places; and such constables shall, upon receipt thereof, forthwith give, or leave in writing, notice, or cause such notice to be given, to the several militia men, or left at the usual places of their abode, to attend at the time and place mentioned in such order. 2 G. 3. c. 20. s. 116.

And if any militia man so ordered to be drawn out and embodied as aforesaid (not labouring under any infirmity incapacitating him to serve as a militia man) shall not appear and march in pursuance of such order; he shall, on conviction before two justices, forfeit 40l. and if he shall not immediately pay the same, they shall commit him to the common gaol for twelve months, or until he shall have paid the same. *id.*

And if any person shall harbour or conceal any militia man, not attending when ordered into actual service, knowing him to be a militia man; he shall, on conviction before one justice, forfeit 5l. by distress; and for want of sufficient distress, such justice shall commit him to the house of correction for two months, or cause him to be publicly whipped. *id.*

To receive one guinea, when ordered to march.

8. When the militia shall be ordered out into actual service, or shall be out in actual service, the receiver general of the land tax for the respective county or place, shall pay to the captain or other commanding officer of such company so ordered out or being out in service, one guinea for each private militia man belonging to his company; to be paid over by such captain or other officer to every such private militia man who belonged to his company at the time such militia was ordered out, on or before the day appointed for marching; and to such militia man, who shall

be

be afterwards ordered out, when he shall join his company. 2 G. 3. c. 20. §. 122.

9. In case any person shall be chosen by lot, and be sworn and inrolled, or provide a substitute who shall be sworn and inrolled, the churchwardens or overseers of the place for which he serves, shall within one month after such swearing and inrolling of the man so chosen by lot or of his substitute, pay to every such person so chosen by lot, if the regiment or battalion shall be then embodied, any sum not exceeding 5*l.* as three deputy lieutenants, or two deputy lieutenants and one justice, or one deputy lieutenant and two justices, in whose presence such person shall be chosen by lot, shall adjudge to be, as near as may be, one half of the current price then paid for a volunteer in the county or riding where such person shall be chosen: which sum shall be taken out of the rate made for volunteers, or if no volunteers shall be provided by the churchwardens or overseers of such parish or place, then out of a rate to be made by the rule aforesaid. 2 G. 3. c. 20. §. 47.

To receive likewise a sum from the proper parish.

Provided, that if such man so chosen by lot, and serving for himself, shall within one month after his inrollment be disapproved of and discharged by the commanding officer; no such sum shall be paid to the person so chosen by lot, but shall be paid to the next person chosen by lot in his stead: and if the substitute he shall have found be disapproved in manner aforesaid, then no such sum shall be paid to the man so chosen by lot, unless he shall serve himself or find another substitute. §. 48.

Provided also, that no person so chosen by lot shall be intitled to the one half of the said current price of a volunteer, without the order of the persons aforesaid under their hands. §. 49.

10. And the officers and private men, who shall be drawn out and embodied, shall be intitled to pay from the day of the date of the king's warrant for that purpose. 2 G. 3. c. 20. §. 118.

Pay to commence from the date of the king's warrant.

11. And when they shall be ordered out into actual service as aforesaid; it shall be lawful for the captain of any company, to augment his company, by incorporating, with the consent of his majesty's lieutenant, or in his absence of two deputy lieutenants, any number of persons who shall offer themselves as volunteers, and who shall appear to him to be sufficiently trained and disciplined, and provided with proper cloaths, arms and accoutrements, and who shall take the said oath, and sign their consent

Volunteers.

consent to serve in the militia for the time of such actual service, and to submit to the same rules and articles of war as militia men are by this act liable to during the time of their continuing in actual service. 2 G. 3. c. 20. f. 120.

XVI. Privileges and exemptions of militia men.

Officers exempted from the office of sheriff.

1. No person, during the time he is acting as a militia officer, shall be obliged to serve the office of sheriff. 2 G. 3. c. 20. f. 34.

Private man exempted from highway duty.

2. No serjeant or private man, serving in the militia, either for himself or as a substitute, shall, during the time of such service, be liable to do any highway duty, commonly called statute work. 2 G. 3. c. 20. f. 76.

From offices.

3. Or be appointed to serve, as a peace officer, or parish officer. *id.*

From serving in the other forces.

4. Nor shall be liable to serve, in any of his majesty's land or sea forces, unless he shall consent thereto. *id.*

Falling sick.

5. If any man, serving in the militia, shall, on the march, or at the place where he shall be called out to annual exercise, be disabled by sickness or otherwise; it shall be lawful for one justice, or mayor, where such man shall then be, by his warrant to order him such relief as he shall think reasonable: And the officers of the parish or place where such militia man shall be so relieved, on producing an account of the expences occasioned thereby, allowed under the hand of a justice, to the treasurer of the county or place for which such man shall serve, shall be reimbursed the same by the said treasurer out of the county stock. 4 G. 3. c. 17. f. 5.

Leaving families.

6. If any militia man, who shall have been chosen by lot, shall, when embodied and called out into actual service, and ordered to march, leave a family unable to support themselves, the overseers of the poor of the parish, tithing or township where the family of such militia man shall dwell, shall by order of one justice, out of the poor rates of such place, pay to such family a weekly allowance, according to the usual and ordinary price of labour in husbandry within the county, riding, division, district or place where such family shall dwell, by the following rule; that is to say, for one child under the age of ten years, any sum not exceeding the price of one day's labour; for two children under the age aforesaid, any sum not exceeding the price of two days labour; for three or four children under the age aforesaid, any sum not exceed-

ing the price of three days labour; for five or more children under the age aforesaid, any sum not exceeding the price of four days labour; and for the wife of such militia man, any sum not exceeding the price of one day's labour; and the same shall be forthwith reimbursed to such overseer, by the treasurer of the county, riding or place where such parish, tithing or township shall be situate, out of the publick stock. 2 G. 3. c. 20. §. 81.

And the treasurer of every county, riding, division, and place, shall keep distinct accounts of all the monies by him reimbursed to such overseers as aforesaid; and shall at the end of seven calendar months from the passing of this act, and afterwards at the end of every six calendar months, return the said accounts, together with the accounts which he shall have received from the several treasurers of the cities, towns, liberties, or places, to the office of the treasurer's remembrancer of the court of exchequer. §. 82.

And in all cities, towns, liberties, divisions and places, which are not liable to contribute to the county rates by virtue of the act of the 12 G. 2. c. 29. the justices of the peace for every such city, town, liberty, division and place, at any sessions or meeting, may and shall appoint a treasurer, and shall assess upon every parish, tithing, township, hamlet or vill, within their jurisdictions, in such proportions as the rates heretofore made for the relief of the poor have been usually assessed, and shall cause to be paid out of the money collected and levied for the relief of the poor of every such parish, tithing, township, hamlet or vill, into the hands of such treasurer, such sums as they in their discretion shall think sufficient for reimbursing to the overseers of the poor of the several parishes, tithings, townships, hamlets or vills within their jurisdictions, the amount of the weekly allowances paid by such overseers to the families of the militia men residing within their jurisdictions; and every such treasurer shall forthwith reimburse the same to every such overseer accordingly. And such treasurer shall keep distinct accounts of all monies so paid into his hands, and by him reimbursed to such overseer as aforesaid; and shall, at the end of every six calendar months, transmit the said accounts to the treasurer of the county or riding which such city, town, liberty, division or place is by this act united with and made part of for the purposes of the said act. (Provided, that the treasurer of the city of Lincoln and county of the said city, shall transmit his accounts to the treasurer of the division of Lindsey with the county of Lincoln.) §. 83.

Provided, that within the city and county of the city of *Exeter*, the allowances to the families shall be paid by the treasurer of the corporation of the governor, deputy governor, assistants, and guardians, of the poor of the city and county of *Exeter*. *f. 84.*

And the monies to be levied by parish rates within the city and county of the city of *Bristol*, by virtue of this act, shall be raised as other money for the relief of the poor there by virtue of any act or acts of parliament relating thereto. *f. 85.*

And the treasurer of any county, riding, city, town, liberty, division or place, who shall after the passing of this act reimburse to any overseer as aforesaid any sum of money in pursuance of this act, on account of the weekly allowance to the family of any militia man serving in the militia of any county, riding, city, town, liberty, division or place, other than the county, riding, city, town, liberty, division or place where such family shall dwell, shall deliver or transmit an account of such money as he shall have so reimbursed as aforesaid, signed by one or more justices of the place where such family shall dwell, to the treasurer of the county, riding, city, town, liberty, division or place, in the militia whereof such militia man shall serve; and thereupon the treasurer to whom such account shall have been delivered or transmitted, shall pay to the treasurer who shall have so delivered or transmitted such account, the sums so by him reimbursed to such overseers of the poor, and shall be allowed the same in his accounts. *f. 86.*

Intituled to Chelsea hospital.

7. If any non-commission officer, or private militia man, shall be maimed or wounded in actual service; he shall be equally intituled to the benefit of Chelsea hospital, with any non-commission officer or private soldier belonging to his majesty's other forces. *2 G. 3. c. 20. f. 116.*

May set up trades.

8. And also every such person, having served in the militia when called out into actual service, and being a married man, may set up and exercise any such trade as he is apt and able for, in any town or place within Great Britain or Ireland, without any molestation by reason of the using of such trade; in like manner as any mariner or soldier may do by the statute of the *22 G. 2. c. 44.* *2 G. 3. c. 20. f. 79.*

In what case he shall be intituled to his cloaths.

9. No private militia man shall be intituled to his cloaths to his own use, till he hath served three years, if unembodied; if embodied, to be applied, at the end of one year, as the commanding officer shall judge best for the use of such militia man. *2 G. 3. c. 20. f. 80.*

XVII. General

XVII. General power of enforcing the execution hereof.

Besides the particular penalties for particular offences, as above specified; there are several general directions for enforcing the execution of these acts, which are as followeth:

1. All chief constables, petty constables, tithingmen, headboroughs, and other officers of hundreds, rapes, laths, wapentakes, parishes, tithings and places, shall be aiding and assisting to his majesty's lieutenants, and their deputy lieutenants, and justices, and to all to whom any power is by this act given, in the execution hereof. *2 G. 3. c. 20. f. 115.*

Constables and other officers to attend.

2. And it shall be lawful for the deputy lieutenants and justices within their subdivisions, from time to time, to issue out their order or warrant under their hands and seals, commanding the attendance of the constable, tithingman, headborough, or other officer of any parish, tithing or place within their subdivisions, at such times and places as in such order or warrant shall be expressed; and if they shall refuse or neglect to appear, they shall suffer as followeth:

General penalty on their neglect or disobedience.

That is to say, If any such officer shall refuse or neglect to comply with such orders and directions as he shall from time to time receive, from his majesty's lieutenant, deputy lieutenants and justices as aforesaid; in such case, three deputy lieutenants, or two deputy lieutenants together with one justice, or one deputy lieutenant together with two justices, shall imprison him in the common gaol, there to be kept without bail or mainprize for the space of one month; or fine him not exceeding 5*l.* nor under 40*s.* by distress; rendering the overplus on demand, after deducting the charge of distress and sale. *2 G. 3. c. 20. f. 71.*

3. And in all cases, where the lieutenant, deputy lieutenants, or justices are by this act required to examine, hear, and determine; all witnesses shall be examined upon oath; which oath, such lieutenant, deputy lieutenants, and justices, or any one of them, are empowered to administer. *f. 130.*

Power to administer an oath.

4. All fines, penalties and forfeitures by this act imposed, the manner of recovery whereof is not in this act particularly provided for, shall on proof upon oath before one justice, be levied by distress by warrant of such justice; and where the goods of such offender shall not be sufficient to answer the distress, such justice shall commit him to the common gaol, for any time not exceeding three months: And all fines, penalties, and forfeitures by this

General levying and application of the forfeitures.

act imposed, the application whereof is not otherwise particularly provided for, shall be paid to the clerk of the regiment or battalion, and be made a common stock; and the said clerk shall give a particular account thereof, as it shall arise, to the colonel or commanding officer; who shall cause butts to be erected in some convenient place, and shall direct the clerk of the regiment or battalion to buy and provide with some part of the money so arising, a proper quantity of gunpowder and ball, to be used at proper times by the militia men in shooting at marks; and to dispose of such other part thereof as he shall think reasonable, in some prizes to be given to such militia men, as shall by the commanding officer then present be adjudged to be the best marksmen; and to apply the residue thereof to other contingencies, relating to the regiment or battalion. *f. 128.*

Commitment to
the house of cor-
rection.

5. In all cases, when any person shall be committed to the house of correction by virtue of this act; he shall, during the time of such commitment, be kept to hard labour. *f. 129.*

Certiorari.

6. No order or conviction made by any of his majesty's lieutenants, or by three deputy lieutenants, or by two deputy lieutenants together with one justice, or by one deputy lieutenant together with two justices, or by any justice or justices, by virtue of this act, shall be removed by certiorari, nor execution or other proceedings upon such order be superseded thereby. *f. 131.*

Treble costs.

7. If any suit be commenced against any person, for any thing done in pursuance of this act; the action shall be laid in the proper county, within six months, and not afterwards; and the defendant may plead the general issue, and if he recovers shall have treble costs. *f. 147.*

XVIII. Exceptions with respect to particular places and persons.

The city of Lon-
don.

1. His majesty's lieutenants commissioned for the militia of the city of *London*, shall continue to list and levy the trained bands and auxiliaries of the said city, in manner as heretofore. *2 G. 3. c. 20. f. 140.*

The Tower
hamlets.

2. It shall be lawful for the constable of the tower, or lieutenant of the Tower hamlets, for the time being, from time to time, to appoint his deputy lieutenants, and to give commissions to a proper number of officers to train and discipline the militia to be raised within and for the said division, pursuant to the statute of the 13 & 14 C. 2. and

to form the same into two regiments of eight companies each, in such manner as the said constable or lieutenant hath used to do: and also, for defraying the necessary charge of trophies and other incident expences of the militia of the same division, it shall be lawful for his majesty's said constable or lieutenant, to continue to raise in every year the proportion of a fourth part of one month's assessment of trophy money, within the said division or hamlets, in such manner as he hath used to do by the said act of the 13 & 14 C. 2. *id.* f. 141.

And his majesty's said constable of the Tower, or lieutenant of the Tower hamlets, shall appoint a treasurer of the said trophy money, for receiving and paying such monies as shall be levied by the said act of C. 2. who shall yearly account in writing and upon oath for the same to the said lieutenant or his deputy lieutenants or any three of them; which accounts shall be certified to the justices for the said division at their next sessions. And the said constable or lieutenant shall not issue out warrants for raising any trophy money, until the justices at such sessions shall have examined, stated and allowed the accounts of the trophy money raised for the preceding year, and certify the same under the hands and seals of four of such justices; unless where it shall appear to such justices, that by reason of the death of such treasurer or otherwise, such accounts cannot be passed. f. 142.

3. Nothing in this act shall extend, to the tanners in The tanneries. Devon and Cornwall; but the lord warden of the stanneries for the time being, in pursuance of his majesty's commission in that behalf, and such as he shall commissionate and authorize under him, shall use the like powers, and array, assess, arm, muster and exercise the said tanners, as hath been heretofore used, and according to the ancient privileges and customs of the stanneries. f. 139.

4. The lord warden of the cinque ports, two ancient The cinque ports. towns, and their members, and in his absence his lieutenant or lieutenants, shall put in execution within the same all the powers and authorities granted by any former act or acts, in like manner as his majesty's lieutenants of counties and their deputy lieutenants may do; and may keep up and continue the usual number of soldiers in the said ports, towns and members, unless he or they find cause to lessen the same: and the militia of the said ports, towns and members, shall remain separate from the militia of the several counties within which the said ports, towns and members are situate. f. 143.

Isle of Wight:

5. After the number of persons, which the Isle of Wight is to furnish to the militia of the county of *Southampton*, shall have been appointed, by his majesty's lieutenants and the deputy lieutenants, or by the deputy lieutenants of the said county at large; the governor of the said island shall appoint the officers of the militia there, as his majesty's lieutenants of counties may do; and shall appoint five or more deputies to act with him: which deputies and officers shall be qualified and act as is prescribed with respect to like officers in wales. And the militia of the said island shall be raised in the same manner as the militia of the county of *Southampton*, and shall be deemed a part of the militia of the said county. And after the same shall be so raised, the governor, lieutenant governor and deputies shall order and direct the training and exercising the militia, in the same manner as the lieutenants and deputy lieutenants may do elsewhere. *f. 127.*

Berwick upon
Tweed.

6. All provisions made for the county of *Northumberland* and the militia thereof, shall be in force with respect to the town of *Berwick upon Tweed*, except only as to the particulars here expressed and otherwise provided for: and out of the persons returned in the lists for the said town a number of private militia men shall be chosen by lot to serve for the said town, in the same proportion with the private militia men appointed to serve for the other respective hundreds, wards, and other divisions within the said county of *Northumberland*: and if persons can be found within the said town and liberties thereof, with such qualifications as are required for deputy lieutenants and officers within cities and towns which are counties of themselves; the chief magistrate of the said town of *Berwick* shall appoint five deputy lieutenants, and such number of officers of the militia as shall be proportionable to the number of militia men which the said town shall raise, as their quota towards the militia of the county of *Northumberland*. And the said militia shall annually join the militia of the county of *Northumberland*, and be exercised together, and shall then, and also in time of actual service, be deemed the militia of the county of *Northumberland* for the purposes aforesaid. *f. 126.*

Parish in different
counties.

7. Where any parish shall lie in more counties or ridings than one; the inhabitants of such parish shall serve in the militia of that county or riding, wherein the church belonging to such parish is situated. *f. 132.*

Quakers.

8. If a quaker shall be chosen by lot to serve in the militia, and shall refuse or neglect to appear and to take the oath

oath in that behalf provided, and to serve in the said militia, or to provide a substitute to be approved as aforesaid; three deputy lieutenants, or two deputy lieutenants together with one justice, or one deputy lieutenant together with two justices, shall, if they think proper, upon as reasonable terms, as may be, provide and hire a fit person, who shall take the said oath, and subscribe his consent to serve in the said militia for the space of three years, as the substitute of such quaker; and shall levy (G) by distress and sale of the goods and chattels of such quaker, such sum or sums as shall be necessary, to defray the expence of providing and hiring such person to serve in the said militia for the space of three years, as the substitute of such quaker, rendering the overplus, after deducting the charges of distress and sale. And if any measures shall be used in making distress, which may by such quaker be thought oppressive; he may complain thereof to the deputy lieutenants and justices at their next meeting, who shall hear and finally determine the same. *f. 87.*

And in every place where any rate as is aforesaid shall be made, where the churchwardens or overseers shall complain to a justice, that a quaker or quakers refuse to pay his or their assessment; such justice may order such costs and charges for levying the distress, as he shall think reasonable not exceeding 10 s. on each of the said quakers, where there are no more than two of them, and where there are a greater number, not exceeding 5 s. on each. *f. 88.*

9. The inhabitants of the constabulary of *Craike*, a parcel of the county of *Durham* surrounded by the North Riding of the county of *York*, shall serve in the militia of the said North riding. *f. 133.*

10. The inhabitants of that part of the parish of *Maker Maker*, that lies in the county of *Cornwall*, shall serve in the militia of the said county. *f. 134.*

11. The inhabitants of the town and parish of *Woking* - *Wokingham*, shall serve in and be trained and exercised with the militia of the county of *Berks*. *f. 135.*

12. The inhabitants of the township of *Filey*, shall serve *Filey* in the militia of the East Riding of the county of *York*. *f. 36.*

13. The inhabitants of *Threapwood*, shall serve in the *Threapwood* militia of the county of *Flint*, and be trained and exercised with the militia of the parish of *Wrothenbury*. *f. 37.*

14. The inhabitants of the parish of *St. Martin*, called *Stamford Baron*, in the suburbs of the borough and town

of *Stamford*, on the south side of the waters there, called *Welland*, shall serve in the militia of the county of *Lincoln*,
f. 38.

A. Form of a precept to the high constable for ordering lists to be returned; with the petty constable's warrant thereupon.

Westmorland. } To H. C. gentlemen, chief constable
of the East Ward within the said
county.

WE A. D. and B. D. esquires, deputy lieutenants, and I. P. and K. P. esquires, two of his majesty's justices of the peace for the said county, at our general meeting for that purpose assembled, do hereby require you to issue out your warrants to the several petty constables within your said ward, according to the form hereon indorsed. Given under our hands and seals the ——— day of ——— in the year ———.

Form of the said warrant indorsed.

Westmorland, } To the constable of ———.
East ward.

BY virtue of an order from the deputy lieutenants [and justices of the peace] in and for the said county at their general meeting for that purpose assembled, unto me directed, you are hereby required to make out a fair and true list in writing of all men usually and at this time dwelling within your constablewick, between the ages of eighteen and forty-five years, distinguishing therein their ranks and occupations, and which of the said persons labour under any infirmities incapacitating them from serving as militia men; and also which of them (if any) is a peer of this realm, or a person serving as a commission officer in any regiment, troop or company in his majesty's other forces, or in any of his majesty's castles or forts, or a non-commission officer or private man serving in any of his majesty's other forces, or a commission officer serving or who has served for four years in the militia, or a member of either of the universities, clergyman, licensed teacher of any separate congregation, constable, or other peace officer, articulated clerk, apprentice, seaman or seafaring man, or poor man who has three children born in wedlock. Which list so fairly and truly

truly made as aforesaid, you are hereby required to return to the deputy lieutenants and justices of the peace for the said county, at their meeting for that purpose to be held on the ——— day of ——— next ensuing the date hereof, at the moot-hall in Appleby in the said county. And you are hereby further required to affix a true copy of the said list so to be made out as aforesaid, on the door of the church or chapel belonging to your respective parish, township or place; and if such place being extraparochial, hath no church or chapel belonging thereto, then on the door of the church or chapel of some parish or place there-to adjoining, on some Sunday morning which shall be three days at the least before the said ——— day of ———. And also you are to affix notice in writing at the bottom of the said list, of the day and place of the said meeting, and that all persons who shall think themselves aggrieved may then appeal, and that no appeal will be afterwards received. Herein fail you not. Given under my hand, the ——— day of ——— in the year of our lord ———.

H. C. chief constable of
the said ward.

B. Precept to the high constable, for issuing his warrants to the petty constables, to give notice of the number appointed to serve within each parish or place, and of the time and place for balloting.

Westmorland. { To H. C. gentleman, chief constable
of the West Ward within the said
county.

WE A. D. and B. D. esquires, deputy lieutenants, and J. P. and K. P. esquires, justices of the peace in and for the said county, at our subdivision meeting assembled, for proportioning the number of private militia men to serve for each parish, tithing or place within the said ward, do hereby require you to give notice to the several petty constables within your said ward, of the number of men appointed by us to serve for the several parishes, tithings or places within their respective districts, according to the list hereunto annexed; and that their next subdivision meeting, for causing the said men to be chosen by lot to serve in the said militia will be at ——— in ——— in the said county, on the ——— day of ——— now next ensuing. Given under our hands and seals the ——— day of ——— in the year ———.

Note;

Note ; it may be proper in this case (tho' not required by the act), and more especially in case of occasional discharges, to require the petty constables to give notice to the several persons within their respective districts, liable to be ballotted, that they may appear, if they think fit, and shew cause why such discharges should not be made, or such ballotting should not be; for they may offer volunteers ; or the cause assigned for such discharge may not be true, and it is reasonable they should have opportunity to disprove it : And consequently, the high constable's warrant to the petty constables may vary accordingly.

C. Precept to the high constable, for issuing his warrants to the petty constables, to give notice to the persons chosen by lot, to appear and take the oath and be inrolled ; with the petty constable's warrant thereupon.

Westmorland. } To H. C. gentleman, chief constable
of the West Ward, within the said
county.

WE A. D. and B. D. esquires, deputy lieutenants, and J. P. and K. P. esquires, two of his majesty's justices of the peace, in and for the said county, at our subdivision meeting for that purpose assembled, do hereby order and require your forthwith to issue out your warrants to the several petty constables within your said ward, according to the form hereon indorsed. Given under our hands and seals the ——— day of ——— in the year of our lord ———.

Form of the said warrant indorsed.

Westmorland, } To the constable of —
West ward.

BY virtue of an order from the deputy lieutenants and justices of the peace in and for the said county, at their subdivision meeting for that purpose assembled, you are hereby directed and required to give notice to A. M. an inhabitant within your constablewick, chosen by lot at the said meeting to serve in the militia of the said county, that he do appear at the moot-hall in Appleby in the said county, on ——— the ——— day of ——— next, then and there to take the oath
I in

in that behalf required by law, and to be inrolled to serve in the militia of the said county as a private militia man for the space of three years, or otherwise to provide a fit person (to be approved by the deputy lieutenants and justices of the peace that shall be then and there present) to serve as his substitute, who shall take the said oath and be inrolled in manner aforesaid. Which notice you are to give unto him, or to leave the same at his place of abode, at least seven days before the said ——— day of ——— next. And be you then there to certify what you shall have done in the premises. Herein fail you not. Given under my hand the ——— day of ——— in the year of our lord ———.

H. C. chief constable of
the said ward.

Form of the notice to be left at the dwelling house,
where personal notice cannot be given.

William Harrison,

NOTICE is hereby given unto you, that you are chosen by lot to serve in the militia of this county of W. and that you are to appear at the moot-hall in A. in the said county, on ——— the ——— day of ——— next, before the deputy lieutenants and justices of the peace for the said county to be then and there assembled, to take the oath in that behalf required, and to be inrolled to serve in the militia of the said county as a private militia man for the space of three years, or otherwise to provide a fit person to be then and there approved by the said deputy lieutenants and justices, who shall take the said oath, and be then and there inrolled as aforesaid. Given under my hand the ——— day of ——— in the year of our lord ———.

A. C. constable
of ———.

To prevent mistakes, it may be best to have printed forms, and to deliver the same properly filled up to the respective constables.

D. Form

(New) Militia.

D. Form of a warrant against a militia man not appearing to be sworn and inrolled.

Westmorland. { To the constable of ———

WHEREAS complaint and information upon oath hath been made unto me J. P. esquire, one of his majesty's justices of the peace in and for the said county, that A. O. late of ——— in the county aforesaid, yeoman, (not being one of the people called quakers) hath been duly chosen by lot to serve as a private militia man in the militia of the said county, and hath had due notice to appear before the deputy lieutenants and justices of the peace in and for the said county, at their subdivision meeting for that purpose assembled, to take the oath in that behalf required, and to be inrolled to serve in the said militia as a private militia man, or to provide a fit person to be approved by the said deputy lieutenants and justices as aforesaid to serve as his substitute; and that he the said A. O. hath neglected [or refused] to take the said oath, and to serve in the said militia, and hath also neglected to provide any fit person to serve as his substitute: These are therefore to require you forthwith to summon the said A. O. to appear before me at the house of ——— in ——— in the said county, on ——— the ——— day of ——— at the hour of ——— in the afternoon of the same day, to answer unto the said complaint, and to shew cause why the penalty of ten pounds should not be levied upon his goods and chattels for the said offence. Herein fail you not. Given under my hand and seal the ——— day of ——— in the year of our lord ———.

E. Warrant of distress for the penalty of 10 l.

Westmorland. { To the constable of ———.

WHEREAS A. O. late of ——— in the county of ———, yeoman, (not being one of the people called quakers,) is this day duly convicted upon oath before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, for that he the said A. O. having been duly chosen by lot to serve as a private militia man in the militia of the said county, and after due notice given unto him to appear before the deputy lieutenants and justices of the peace in and

for the said county at their subdivision meeting for that purpose assembled, to take the oath in that behalf required, and to be inrolled to serve in the said militia as a private militia man, or to provide a fit person to be approved by the said deputy lieutenants and justices as aforesaid, to serve as his substitute, hath neglected to take the said oath, and to serve in the said militia, and also hath neglected to provide any fit person to serve as his substitute; whereby he the said A. O. hath forfeited the sum of ten pounds: These are therefore in his said majesty's name to command you, to levy the said sum by distress of the goods and chattels of him the said A. O. And if within the space of [four] days next after such distress by you taken, the said sum together with reasonable charges of taking and keeping the said distress shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the said sum of ten pounds to the said deputy lieutenants and justices as aforesaid, or to such person as they shall appoint to receive the same, for the providing of a substitute to serve for him the said A. O. and for the other purposes by law directed for the application thereof; rendering the overplus (if any shall be) on demand unto him the said A. O. the reasonable charges of taking, keeping and selling the said distress being first deducted. And if sufficient distress cannot be found of the goods and chattels of him the said A. O. whereon to levy the said sum of ten pounds, that then you certify the same to me together with the return of this precept. Herein fail you not. Given under my hand and seal, the _____ day of _____ in the year of our lord _____.

Constable's return of the want of distress:

Westmorland.

A. C. constable of _____ in the said county, maketh oath, before me J. P. esquire, one of his majesty's justices of the peace for the said county, the _____ day of _____ in the year _____ that by virtue of my warrant to him directed, to levy the sum of _____ by distress and sale of the goods and chattels of A. O. late of _____ aforesaid, in the county aforesaid, he the said constable hath made diligent search for such goods and chattels, and that he doth not know, nor can find, that the said A. O. hath goods and chattels sufficient to answer the said distress.

Before me

J. P.

A. C.

F. Com-

F. Commitment for want of distress.

Westmorland. } To the constable of—in the said county,
 } ty, and to the keeper of the common
 } gaol at A. in the said county.

WHEREAS A. O. late of—in the county aforesaid, yeoman, (not being one of the people called quakers,) was on the—day of—duly convicted before the J. P. esquire, one of his majesty's justices of the peace in and for the said county, for that he the said A. O. having been duly chosen by lot to serve as a private militia man in the militia of the said county, and after due notice given unto him to appear before the deputy lieutenants and justices of the peace in and for the said county at their subdivision meeting for that purpose assembled, to take the oath in that behalf required and to be inrolled to serve in the said militia as a private militia man, or to provide a fit person to be approved by the said deputy lieutenants and justices as aforesaid to serve as his substitute, did neglect to take the said oath, and to serve in the said militia, and also did neglect to provide any fit person to serve as his substitute, and thereupon did forfeit the sum of ten pounds: And whereas on the said—day of—in the year aforesaid, I did issue my warrant to the constable of—to levy the said sum of ten pounds, by distress and sale of the goods and chattels of him the said A. O. And whereas it duly appears to me, as well on the oath of the said constable, as otherwise, that he the said constable hath used his best endeavours to levy the said sum on the goods and chattels of the said A. O. as aforesaid, and that the goods and chattels of him the said A. O. are not sufficient to answer the said distress: These are therefore to command you the said constable of—aforesaid, to apprehend the body of the said A. O. and him safely to convey to the common gaol at A. aforesaid in the county aforesaid, and there deliver him to the said keeper thereof, together with this precept. And I do hereby command you the said keeper of the said common gaol, to receive into your custody in the same common gaol the said A. O. and him there safely to keep for the space of [three months]: And for so doing, this shall be your sufficient warrant. Given under my hand and seal, the—day of—in the year of our lord—.

G. Warrant

G. Warrant of distress for quakers substitutes.

Westmorland. { *A. D.* esquire, deputy lieutenant, and
J. P. and *K. P.* esquires, two of his
 majesty's justices of the peace for the
 said county; to the high constable of
 Kendal ward within the said county,
 and to the petty constables of——
 in the said county, and to each and
 every of them.

FORASMUCH as *A. Q.* late of——aforesaid in
 the county aforesaid, yeoman, being one of the people call-
 ed quakers, hath been duly chosen by lot to serve in the militia
 of the said county, and after due notice given unto him hath
 neglected to appear and to take the oath in that behalf required,
 and to serve in the said militia, and hath also neglected to pro-
 vide any fit person to serve for him as his substitute; and
 whereas we the said deputy lieutenant and justices as aforesaid
 have, upon as reasonable terms as might be, namely, for the
 sum of——provided and hired *A. S.* a fit person to serve in
 the said militia, as the substitute of him the said *A. Q.* We
 do therefore hereby require you to levy the said sum of——
 by distress and sale of the goods and chattels of him the said
A. Q. and to pay the same unto——for the use of him
 the said *A. S.* rendring the overplus (if any shall be) unto
 him the said *A. Q.* after deducting the charges of the said
 distress and sale. Herein fail you not. Given under our
 hands and seals, the——day of——in the year of our
 lord——.

Miller.

BY an ancient ordinance, *Hawk. Stat. V. i. p. 181.*
 The toll of a mill shall be taken according to the
 custom of the land, and according to the strength of the
 water-course, either to the twentieth or four and twentieth
 corn.

And yet in some places the millers do claim and take
 the sixteenth part; and where the custom hath been so
 used time out of mind, perhaps it may be good and war-
 rantable. *Dalt. c. 112.*

And Mr. *Dalton* says, the miller ought to take but one
 quart for grinding of one bushel of hard corn, but if he
 fetch

fetch and carry back the grist to the owner, he may take two quarts of hard corn; and this hard corn is intended of wheat, rye, meslin (which is wheat and rye mixed). And for malt, the miller shall take but half so much toll as he taketh for hard corn, that is, one pint in the bushel, for that malt is more easily ground than wheat or rye: But if the miller do fetch to his mill, and carry back the malt to the owner's house, then the miller also shall have double toll. *Dalt. c. 112.*

But, by *Holt Ch. J.* the toll of a mill must be regulated by custom; and if the miller takes more than the custom warrants, it is extortion: But if it is a new mill, there the miller is not restrained to any certain toll; but the persons who will have their corn ground there, must comply with the miller's demands; and whatsoever he takes, it is not extortion, because it is the voluntary agreement of the parties. *L. Raym. 149.*

In some places, the tenants are bound to have their corn ground at the lord's mill. As in the case of *Hix and Gardener, H. 11 J.* In an action on the case for erecting a mill, the lord declared upon a custom for all the inhabitants to grind at his mill, and that the defendant had built a mill there contrary to the custom; and this was adjudged a good custom: And suit to a mill may be by reason of tenure or service, and also by custom, and so may well bind strangers. *2 Bulst. 195.*

And a new erected house within the precincts is within the custom of multure; and none may grind elsewhere, but in case of excessive toll, or that the grist cannot be ground in convenient time. *Hardr. 177.*

T. 16 G. 2. K. and Wood. The defendant being a miller, was indicted for changing corn delivered to him to be ground, and giving bad corn instead of it. It was moved to quash it, because only a private cheat, and not of a publick nature. But it was answered, that being a cheat in the way of trade, it concerned the publick, and therefore was indictable. And the court was unanimous not to quash it. *Seff. Cas. V. 1. 217.*

Altho' every larceny implies a trespass, and a felonious taking of the thing stolen; yet it hath been resolved, that even those who have the possession of goods by the delivery of the party, as a miller who hath corn delivered to him to grind, may be guilty of felony by taking away part thereof with an intent to steal it. *1 Haw. 90.*

Millers are not to be common buyers of any corn, to sell the same again, either in corn or meal; but ought only

only to serve for the grinding of corn that shall be brought to their mills. *Dalt. c. 122.*

Minister. See **Publick worship.**

Misadventure. See **Homicide.**

Misdemeanor.

THIS word in its usual acceptation is applied to all those crimes and offences, for which the law has not provided a particular name; and they may be punished according to the degrees of the offence, by fine, or imprisonment, or both. *Barl.*

Misprision of felony. See **Felony.**

Misprision of treason. See **Treason.**

Mittimus. See **Commitment.**

Money. See **Coin.**

Murder. See **Homicide.**

Muste. See **Soldiers, Militia.**

Mute.

THE whole learning relating to this title will be comprehended in the explication of the statute of *Westminster* 1. c. 12. which is as follows:

Notorious felons, and which openly be of evil name, and will not put themselves in inquest of felonies that men shall charge them with before the justices at the king's suit, shall have strong and hard imprisonment, as they which refuse to stand to the common law of the land. But this is not to be understood of such prisoners as be taken of light suspicion. 3 Ed. 1. 2. 12.

Felons] This statute extendeth not to treason, which is the highest offence; nor to petit larceny, which is of all felonies the lowest: but if a man stand obstinately mute upon an arraignment of treason or petit larceny, he shall

have the like judgment as if he had confessed the indictment. 2 *Inst.* 177. 2 *Haw.* 329.

This word *felons* extendeth as well to women, as to men. 2 *Inst.* 177.

Notorious, and openly of evil fame] Therefore no person shall be put to this punishment, unless the matter be evident or proveable, which it is the duty of the judge to look unto, and to examine the evidence which proves the prisoner guilty of the fact, before he proceed to the judgment of *pain fort & dure*. 2 *Inst.* 177. 2 *Haw.* 330.

And will not put themselves in inquest] This is called standing mute. Now a man may stand mute two manner of ways :

First, when he stands mute *without speaking of any thing* ; and then the court shall *ex officio* inquire by the oath of any 12 persons that happen to be present, whether he do so of malice, or by the act of god ; and if it be found that it was by the act of god, then the judges of the court (who are always to be of council with the prisoner to give him law and justice) ought to inquire touching all those points which he might possibly plead for himself, as whether a felony were done, whether he be the same person that is indicted for it, whether he did it, and whether he hath any matter to alledge for his discharge ; and such inquiry shall be made, not by an inquest of office, but by a jury returned by the sheriff, in the same manner as if the defendant had actually pleaded ; for since it is not his own fault that he did not so plead, there is no reason why his trial should be in a more loose and summary manner, or any way less regular or solemn, than if he had so pleaded. 2 *Inst.* 178. 2 *Haw.* 327, 328. 2 *H. H.* 317.

But what if all this be found against the prisoner, what shall be done?—Whether judgment of death shall be given against him, though he never pleaded, seems yet undetermined. 2 *H. H.* 317.

But after a man hath confessed himself guilty, or pleaded and put himself upon his country, he shall not afterwards be demeaned as one that stands mute, in respect of his subsequent silence ; but the jury shall be charged, and the trial shall proceed, and the like judgment shall be given as in common cases. 2 *Haw.* 327.

Also if the person become mute, and not by the act of god, as by cutting out his own tongue, he shall forthwith be put to his penance. 2 *Inst.* 178.

Another kind of mute is, when the prisoner can speak, and perhaps pleadeth not guilty, or pleadeth a plea in law, and *will not conclude to the inquest* according to this act, that is, to be tried by god and the country; then this act is sufficient warrant, if the cause be evident or probable, to put him to his penance: But if he demur in law, and it be adjudged against him, he shall have judgment to be hanged; and tho' by his demurrer he refuse to put himself upon the inquest according to the letter of this act, yet forasmuch as he is out of the reason of this act, for that he refuseth not the trial of the common law, the demurrer being allowed to him by law, and to be tried by the judges, he shall not be put to his penance, but have judgment to be hanged, and not have *pain fort & dure*. 2 Inst. 178.

At the king's suit] This act speaketh only of indictments at the suit of the king; but the judgment of *pain fort & dure* was at the common law, both in indictments and appeals. 2 Inst. 177.

Shall have strong and hard imprisonment] *Soient mises en la prison fort & dure*: The judgment in this case is, that the man or woman shall be remanded to the prison, and laid there in some low and dark room, where they shall lie naked on the bare earth without any litter, rushes, or other cloathing, and without any garment about them, but something to cover their privy parts, and that they shall lie upon their backs, their heads uncovered and their feet, and one arm shall be drawn to one quarter of the room with a cord, and the other arm to another quarter, and in the same manner shall be done with their legs, and there shall be laid upon their bodies iron and stone, so much as they may bear and more, and the next day following they shall have three morsels of barley bread without any drink, and the second day they shall drink thrice of the water that is next to the house of the prison (except running water) without any bread, and this shall be their diet until they be dead. So as upon the matter they shall die three manner of ways, by weight, by famine, and by cold. And the reason of this terrible judgment is, because they *refuse to stand to the common law of the land*. 2 Inst. 178, 179.

Which punishment being so severe, lord Hale advises, that it be not given too hastily, but that the prisoner be not only thrice admonished, but also have some convenient respite, as until the afternoon, to bethink himself, if

the arraignment be in the morning; or till the next morning, if the arraignment be in the afternoon; and that the judgment it self be distinctly read to him, that he may know his danger before his final refusal, with due admonition not to destroy himself. 2 H. H. 320.

And it is said to be the practice of *Newgate* sessions, where a prisoner refuses to plead, to endeavour to compel him to do it, by tying his thumbs together with whipcord, and drawing them together by the strength of two men, to give him a taste of the pain to be endured, if he will not comply. 2 Haw. 331.

And tho' judgment be given of *pain fort & dure*, yet if the offence laid in the indictment be within clergy, his clergy shall be allowed him; and tho' in strictness of law the prisoner ought to pray it, yet it is the duty of the judge to allow it, tho' not prayed, and that as well after judgment pronounced as before. 2 H. H. 320, 321.

And as to the case how far he is intitled to his clergy, it is enacted by the 3 W. c. 9. that if any person be indicted of any offence, for which by virtue of that or any former statute he is excluded from the benefit of clergy, if he had been convicted by verdict or confession; if he stand mute, or will not answer directly to the felony, or shall challenge peremptorily above 20 of the jury, he shall not be admitted to the benefit of clergy. s. 2.

In which expression [by virtue of any former statute] offences excluded from the benefit of clergy by subsequent statutes seem not to be comprehended; and consequently persons standing mute on an indictment upon any such subsequent statute, shall have their clergy, if it is not otherwise specially provided by such statute. 2 Haw. 332.

And as to the other consequences of standing mute, it is observable, that where a person standing mute is adjudged to his penance, and thereby prevents that attainder which otherwise he might have incurred, he *forfeits his chattels* only, and not his *lands*; and for this reason some have endured this punishment. 2 Haw. 331.

It doth not appear that the prosecutor of an indictment for felony, where the defendant standeth mute, is intitled to the restitution of his goods, either by the common law or by any statute. 2 Haw. 332.

But this is not to be understood of such prisoners as shall be taken on light suspicion] But if they obstinately stand mute, it seemeth that they may be severely fined and imprisoned for the contempt. 2 Haw. 330.

- Naval stores. See **Stores**.
 Navigable rivers. See **Rivers and Navigation**.
 Needlework. See **Buttons**.
 Nets. See **Game**.
 News papers. See **Stamps**.
 Night walkers. See **Surety**.
 Noblemen. See **Peers**.
 Non compos. See **Lunatick**.
 Non conformists. See **Dissenters**.
-

Northern borders.

1. **B**Y the 43 *El. c. 13.* Forasmuch as many persons **Blackmail**, dwelling in *Cumberland, Northumberland, Westmorland, and Duresme*, have been taken by force and kept until ransomed; and whereas by reason of incursions, burnings, and robberies, several inhabitants there have been forced to pay a certain rate of money, corn, cattle, or other consideration, commonly called by the name of *Blackmail*, to divers men of name, friended and allied with divers in those parts, who are known to be great robbers and spoil-takers in the said counties, to the end thereby to be by them freed, protected, and kept in safety; by reason whereof many are impoverished, and rapine much increased: It is therefore enacted, that whosoever shall without good authority take or detain any such persons against their wills, to ransom them, or make a prey or spoil of their persons or goods, upon deadly feud, or otherwise; or shall be aiding therein; or whosoever shall take, receive, or carry any money, corn, cattle, or other consideration, commonly called *Blackmail*, for such protection; or shall burn any stack of corn: he shall, on conviction at the assizes or sessions, be guilty of felony without benefit of clergy. *f. 1, 2.*

Forasmuch as, &c.] At the time when this act was made, and for some time after, the peace of the borders was maintained by commissioners appointed by the two crowns respectively, who agreed upon certain articles to be observed by both sides; appointed guards and watches at certain fords and other places; kept courts; redressed

Northern borders.

grievances; punished offenders, and had power of life and death by way of legal trial in the manner of oyer and terminer. And this act was not made in abolition of such power, but in aid thereof, and for the punishment of certain offenders unto whom the commission of the lords wardens of the marches did not extend; which offenders, although not employed in the protection of the country by virtue of the institution of the wardenship of the marches, yet demanded contribution of the inhabitants under pretence of preserving them from rapine and depredation by reason of the friendship and alliance which they had with the spoil-takers and robbers in those parts.

Blackmail] *Maile*, in *French* is a small piece of money; and in the 9 H. 5. silver halfpence here were termed *mailes*. In a large acceptation, the word *maile* signifies a rent in general, paid either in money, corn, cattle, or other goods, as *geese maile*, *cow maile*, and the like; and in *Scotland*, *maile* is still the common word for rent. *White maile*, white rents, (vulgarly called quit-rents,) were rents paid in silver, and thereby distinguished from work day rents, cummin rents, corn rents, and the like. *Black maile*, or black rents, seem properly to have been rents paid in cattle (otherwise called *neat gelt*, or *neat geld*, from the Danish *gelt*, *geld*, *geldum*, a payment or tribute); but more largely taken, it seemeth to have been used to signify all rents not paid in silver, in contradistinction to the *redditus albi*, blanch farms, or white rents. In parts where the ground was arable, rents were frequently paid in corn; and particularly in the border service, the officers and men appointed to guard against incursions, had for the sustentation of their horses part of their salaries paid in corn, to be raised upon certain estates subject to the enemies depredations, as they had also money out of other estates, and in others (which were near the place of service) they had meadows, foggage, poultry, fuel, and other necessities. The wardens of the marches had an officer called the *serjeant*, who seems to have been a *civil*, and not a *military* officer, for the execution of process, arresting offenders, and such like, in the nature of a bailiff or head constable; and his salary and appointments seem to have been of the like nature with those of the officers military. The *justices in eyre* also had officers attending them called *serjeants*, in the nature of tipstaves, who are taken notice of in the statute of *Westm.* 1. c. 30. In *Britton* the word *serjeant* is used for an officer of the county; and *Bracton* takes notice of a *serjeant of the hundred*.

dred. There were also *serjeants of manors*, who seem to have been the same with those called *land serjeants*; and these were not properly what are now styled *bailiffs of the manor*, but a kind of superior bailiffs over divers manors; for in the setting or supervisal of the watch in the border service, we find sometimes several towns together, as three, four, or more, required to watch at certain fords and places, and the searchers, or examiners of the said watch are the *land-serjeant and bailiffs*, or the *land-serjeant bailiffs and constables* there. There is yet in *Westmorland* a payment called *serjeant oats*; but for which of these kinds of serjeants, or whether for any of them, it is difficult to say.

Deadly feud] *Feud* in the German signifies enmity, or war; as in like manner the word *Foe* signifies an enemy. *Feud* in Scotland, is a combination of kindred to revenge injuries or affronts done or offered to any of their blood. *Deadly feud* is a profession of irreconcilable hatred, till a person is revenged even by the death of his adversary. And this seemeth to have sprung from the institution of the military tenures, whereby the tenant, upon admission to his estate, was obliged to swear fealty and allegiance to his lord, and to take up arms at his lord's summons. This military establishment is what is commonly called the *feudal system*, by an easy derivation (as it should seem) from the word *feud*; although it hath given much trouble to the etymologists to investigate its origin elsewhere. — In the northern counties, where a number of thieves, rogues, and vagabonds combine together to commit rapine, theft, and other outrages, they are still denominated the *foe-gang*.

And, by the said statute, persons outlawed in any of the said counties for any such murder, robberies, burglaries, or other felonies, shall in two months be certified in writing by the clerk of the peace to all the sheriffs of all the said counties; and the said sheriffs shall proclaim them in *Carlisle, Penrith, Cockermouth, Appulby, Kendal, Newcastle, Morpeth, Alnewick, Hexam, Duresme, Darlington, Bishop Auckland, Bernard castle, and Berwick*, and once a month in every their county courts, till they surrender; and the mayors shall proclaim them in every fair, and every six weeks in the market; and persons relieving, or conferring with them, shall, on the like conviction, be imprisoned for six months, and bound to the good behaviour for a year. *f. 3, 4, 5, 6.*

Northern borders.

Englishman
committing a
felony in Scot-
land.

2. By the 4 *J. c. 1.* Felonies committed by *Englishmen* in *Scotland*, may be heard and determined in any of the counties of *Cumberland*, *Northumberland*, or *Westmorland*. And persons accessary thereto in *England*, may be tried tho' the principal be not convicted.

Or the felon may be sent into *Scotland* to be tried, 7 *J. c. 1.*

Moss-troopers.

3. The justices of *Northumberland* and *Cumberland*, may make order in sessions, for charging the respective counties, for securing the same against the moss-troopers (that is, thieves and robbers, who after having committed offences in the borders, do escape through the wastes and mosses); so as *Northumberland* be not charged above 500*l.* nor *Cumberland* above 200*l.* a year. And they may appoint a commander, with 30 men in *Northumberland*, and 12 men in *Cumberland*, to search for, pursue, and apprehend offenders. 13 & 14 *C. 2. c. 22.*

And the persons so employed shall be chosen in sessions yearly, or every two years at the farthest. 29 & 30 *C. 2. c. 2.*

And the sessions shall take security of the persons by them employed for preservation of the borders, to answer the damages sustained by their neglect or default, and to pay the same in four months after proof made thereof in sessions by oath of one witness; so as the goods stolen be entred in one of the books to be kept for that purpose, in 48 hours after they be stolen or gone; and books shall be kept for that end in every market town in the said counties, and in such other places, and by such persons, as the sessions shall appoint. 29 & 30 *C. 2. c. 2.*

And by the 18 *C. 2. c. 3.* Great and notorious thieves and spoil-takers in the said counties of *Northumberland* and *Cumberland*, shall suffer death as felons without benefit of clergy; or may be transported by order of the judges of assize, during life.

Rufance.

I. *What it is.*

II. *How it may be removed.*

III. *How punished.*

I. *What*

I. What it is.

A Common nuisance seems to be, an offence against the publick, either by doing a thing which tends to the annoyance of all the king's subjects, or by neglecting to do a thing which the common good requires. 1 Haw. 197.

Annoyances to the prejudice of particular persons, are not punishable by a publick prosecution as common nuisances, but are left to be redressed by the private actions of the parties aggrieved by them. 1 Haw. 197.

Where note a diversity between a *private* and a *publick* nuisance: If it is a *private* nuisance, he shall have his action upon his case, and recover his damages; but if it is a *publick* nuisance, he shall not have an action upon his case, and this the law hath provided for avoiding of multiplicity of suits, for if any one might have an action, all men might have the like; but the law for this common nuisance hath provided an apt remedy, by presentment or indictment at the suit of the king, in the behalf of all his subjects; unless any man hath a particular damage, as if he and his horse fall into a ditch made across a highway, whereby he received hurt and loss, there for his special damage which is not common to others, he shall have an action upon his case. 1 Inst. 56.

And from hence it clearly follows, that no indictment for a nuisance can be good, which lays it to the damage of private persons only: as where it accuses a man of surcharging such a common; or of inclosing such a piece of ground, wherein the inhabitants of such a town have a right of common, to the nuisance of all the inhabitants of such a town; or of disturbing a watercourse running to such a mill, to the damage of such a person and his tenants, without saying of *all the liege subjects of the king*. 1 Haw. 197.

Yet it hath been said, that an indictment of a *common scold* is good, although it conclude to the common nuisance of *divers*, instead of *all*, the king's subjects; perhaps for this reason (says Mr. *Hawkins*) because a common scold cannot but be a common nuisance. 1 Haw. 198.

And if the law be so in this case, why should not an indictment setting forth a nuisance to a way, and expressly and unexceptionably shewing it to be a highway, be good, notwithstanding it conclude to the nuisance of *divers*, without saying *all* the king's subjects? And perhaps the authorities

Nuisance.

rities which seem to contradict this opinion, might go upon this reason, that in the body of the indictment, it did not appear with sufficient certainty, whether the way, wherein the nuisance was alledged, were a highway, or only a private way; and therefore that it shall be intended from the conclusion of the indictment, that it was a private way. 1 Haw. 198.

There is no doubt, but that common *bawdy houses* are indictable as common nuisances; and it hath been said, that all common *stages for rope dancers*, and also all common *gaming houses*, are nuisances in the eye of the law, not only because they are great temptations to idleness, but also because they are apt to draw great numbers of disorderly persons. 1 Haw. 198.

Also, it hath been holden, that a common *play house* may be a nuisance, if it draw together such a number of coaches or people, as prove generally inconvenient to the places adjacent. 1 Haw. 198.

Erecting a *shed* so near a man's house, that it *stops up his lights*, is not a nuisance for which an action will lie, unless the house is an ancient house, and the lights ancient lights. 2 Salk. 459.

Also stopping a *prospect* is not a common nuisance. 3 Salk. 247.

A gate erected in a highway, where none had been before, is a common nuisance. 1 Haw. 199.

It hath been holden, that it is no common nuisance to *make candles* in a town because the needfulness of them shall dispense with the noisomeness of the smell; but the reasonableness of this opinion seems justly to be questionable, because whatever necessity there may be that candles be made, it cannot be pretended to be necessary to make them in a town: And surely the trade of a *brewer* is as necessary as that of a *chandler*; and yet it seems to be agreed, that a *brewhouse* erected in such an inconvenient place, wherein the business cannot be carried on without greatly incommoding the neighbourhood, may be indicted as a common nuisance: And so in like case may a *glass house*, or a *swine yard*. 1 Haw. 199.

Two persons were indicted for making great quantities of *noisome, offensive, and stinking liquors*, called acid spirit of sulphur, oil of vitriol, and oil of aqua fortis; whereby the air was impregnated with noisome and offensive smells: And it was held by the court to be a nuisance. The word *noisome* comes in the place of the latin *nocivus*; and means not only disagreeable, but hurtful. And lord Mansfield

Mansfield said, it is not necessary, to constitute the offence, that the smell should be *unwholesome*; it is enough, if it renders the enjoyment of life and property *uncomfortable*. *Burrow*. 333. *Rex v. White and Ward*. E. 30. G. 2.

A person was indicted for making great noises in the night with a *speaking trumpet*, to the disturbance of the neighbourhood; and it was held by the court to be a nuisance. T. 12 G. K. and *Smith*. Str. 704.

But it hath been resolved, that neither an old, nor a new *dove-cote* is a common nuisance; but perhaps if a tenant hath erected one without licence of the lord of the manor, the lord may have an action on his case against him. 1 *Haw*. 198.

A monster shewn for money is a misdemeanor. 2 *Cha*. Ca. 110. T. 34 C. 2. *Harring and Watrend*. It was a monstrous child, that died, and was embalmed to be kept for shew; but was ordered by the lord chancellor to be buried.

If a man has a dog that kills sheep, this is not a publick nuisance, but the owner of the dog (knowing thereof) is liable to an action; but if he is ignorant of such quality, he shall not be punished for this killing: And in an action upon the case for such killing, the plaintiff shall be required to prove in evidence, that the dog had used to kill sheep. *Dyer* 25. *Het*. 171.

And in order to maintain an action for biting by the defendant's dog, it must be proved also that he knew his dog to be used to bite; but one instance is sufficient in that case. 12 *Mod*. 555.

And if a man keeps a dog accustomed to bite sheep, and he knows it, and notwithstanding he keeps the dog still, and afterwards the dog bites a horse; this shall be actionable, altho' he had been known before to bite sheep only: because the owner, after notice of the first mischief, ought to have destroyed or hindered him from doing any more hurt. *Ld. Raym*. 110.

If a man has an unruly horse in his stable, and leaves open the stable door, whereby the horse gets forth and doth mischief, an action lies against the master. 1 *Vent*. 295.

In the case of *Buxendin and Sharp*, E. 8 W. The plaintiff declared, that the defendant kept a bull, that used to run at men, but did not say that the defendant knew of this quality; it was adjudged, that an action did not lie, unless

Nuisance.

unless it did appear that the master knew of this quality.
2 Salk. 662.

There is a difference between beasts that are *feræ naturæ*, as lions and tygers, which a man must always keep up at his peril; and beasts that are *mansuetæ naturæ*, and break thro' the tameness of their nature, such as oxen and horses: In the latter case, an action lies, if the owner has had notice of the quality of the beast; but in the former case, an action lies without such notice. *Ld. Raym.* 1583.

But after such wild beasts have escaped from their keeper, so as to regain their natural liberty; in such case, he that kept them before, shall not answer for the damage they shall commit after he hath lost them, and they have resumed their wild nature. *1 Ventr.* 295.

A *maffiff*, going in the street unmuzzled, from the ferocity of his nature being dangerous and cause of terror to his majesty's subjects, seemeth to be a common nuisance, and consequently the owner may be indicted for suffering him to go at large.

II. How it may be removed.

It seemeth to be certain, that any one may pull down or otherwise destroy a common nuisance, as a new gate, or even a new house erected in a highway, or the like; for if one whose estate is or may be prejudiced by a *private* nuisance actually erected, as a house hanging over his ground, or stopping his lights, may justify the entering into another's ground, and pulling down and destroying such a nuisance, whether it were erected before or since he came to the estate, it cannot but follow *a fortiori*, that any one may lawfully destroy a *common* nuisance: And as the law is now holden, it seems that in a plea, justifying the removal of the nuisance, a man need not shew that he did as little damage as might be. *1 Haw.* 199.

But although he may remove the nuisance, yet he cannot remove the materials, or convert them to his own use. *Dalt. c.* 50.

III. How punished.

It is said, that a common scold is punishable (after conviction, upon indictment) by being put into the cucking stool. *1 Haw.* 200.

Note; *cuck* or *guck* in the Saxon tongue (according to lord Coke) signifieth to scold or brawl; taken from the bird
cuckow

cuckow or *guckhaw*: and *ing* in that language signifieth water; because a scolding woman was for her punishment sowed in the water. 3 *Inst.* 219. The common people in the northern parts of *England*, amongst whom the greatest remains of the ancient *Saxon* are to be found, pronounce it *ducking stool*; which perhaps may have sprung from the *Belgick* or *Teutonick* *ducken*, to dive under water; from whence also probably we denominate our *duck* the water fowl: or rather, it is more agreeable to the analogy and progression of languages, to assert, that the substantive *duck* is the original, and the verb made from thence; as much as to say, that to *duck* is do as that fowl does.

And she may be convicted, without setting forth the particulars in the indictment. 2 *Haw.* 227.

Nevertheless, the offence must be set forth with convenient certainty; and the indictment must conclude not only against the peace, but to the common nuisance of divers of his majesty's liege subjects. As in the case of *K. and Margaret Cooper*, *H.* 19 *G.* 2. She was convicted on an indictment, for being a common and turbulent brawler, and sower of discord amongst her quiet and honest neighbours, so that she hath stirred, moved, and incited divers strifes, controversies, quarrels, and disputes, amongst his majesty's liege people, against the peace, &c. It was moved in arrest of judgment, that the charge was too general, and did not amount to being either a barrator or common scold, which are the only instances in which a general charge will be sufficient. It was likewise objected, that if the words did amount to a description of a scold, yet it should be laid to be to the common nuisance of her neighbours, for every degree of scolding is not indictable. And the court was of opinion, that the judgment ought to be arrested on both exceptions; for none of the words here used are the technical words, and it must be laid to be to the common nuisance. *Str.* 1246.

There is no doubt, but that whoever is convicted of another nuisance, may be fined and imprisoned; and it is said, that one convicted of a nuisance done to the king's highway, may be commanded by the judgment to remove the nuisance at his own costs: and it seemeth to be reasonable, that those who are convicted of any other common nuisance, should also have the like judgment. 1 *Haw.* 200. *Str.* 686.

And the defendant shall not be allowed to make any objections against the indictment, until he hath pleaded to it. *Dalt.* c. 66.

And

Nuisance.

And the court never admits a person convicted of a nuisance, to a small fine, until proof is made of the nuisance being removed. *Dalt. c. 66.*

A master is indictable for a nuisance done by his servant. *Ld. Raym. 264.*

All common nuisances are indictable not only at the sessions, but also in the torn and leet. *2 Haw. 67.*

An act of general pardon only discharges the fine, but not the abatement of the nuisance. *2 Salk. 458.*

There are many offences by particular statutes declared to be common nuisances, which are treated of under their respective titles.

General indictment for a nuisance.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of _____ in the county of _____ yeoman, on the _____ day of _____ in the _____ year of the reign of _____ and on divers other days and times, as well before as afterwards, with force and arms, at _____ in the said county, [here set forth the nuisance;] and the same (nuisance) so as aforesaid done, doth yet continue and suffer to remain; to the common nuisance of all the lieges and subjects of our said lord the king, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Oaths.

I. Of oaths in general.

II. The common forms of oaths.

III. Quakers oaths.

IV. Oaths of infidels.

I. Of oaths in general.

Oath.

I. **O**ATH is a corruption of the Saxon word *coth*.
3 *Inst. 165.*

Corporal oath.

2. It is called a corporal oath, because the person lays his hand upon some part of the scriptures when he takes it. 3 *Inst. 165.*

3. If

3. If the oath be taken on the common prayer book, Oath taken on which hath the epistles and gospels, it is good enough, the common and perjury upon the statute may be assigned upon this prayer book.
oath. 2 *Keb.* 314.

4. The words, *So help me God*, in the common form *So help me god*, of an oath, perhaps may have been first used in the very ancient manner of trial by battle in this kingdom, or at least are delivered with a peculiar emphasis in that solemnity; wherein the appellee lays his right hand on the book, and with his left hand takes the appellant by the right, and swears to this effect, *Hear this, thou who callest thy self John by the name of baptism, whom I hold by the hand, that falsely upon me thou hast lied; and for this thou liest, that I who call my self Thomas by the name of baptism, did not feloniously murder thy father W. by name—So help me God; —* (and then he kisses the book and says) *and this I will defend against thee by my body, as this court shall award.* And so the appellant is sworn in like manner.

[Where we may observe also the genuine foundation, as it seemeth, of the *lie* being esteemed still so great an affront above all others, as, whenever it is pronounced, to cause an immediate affray and bloodshed.]

5. No ancient oath can be altered, or new oath imposed, without an act of parliament; nor can any oath be administered by any, that have not allowance by the common law time out of mind, or by an act of parliament. 2 *Inst.* 479. 3 *Inst.* 165. Power of administering an oath.

And this is the reason why generally there is a clause in the statutes, giving power to the justices to this or the like effect [*which oath such justice is hereby impowered to administer;*] tho' it seems to be clear, that if an act impowers a justice, in a summary way to convict an offender by the oath of a witness, it doth (without any more) of necessity give him power to administer the oath to that witness; and that it is sufficiently implied in the words, and necessarily included in the power. For when the law grants any thing, that also is granted, without which the thing it self cannot be. 12 *Co.* 130, 131.

6. Where an oath is administered by a person that hath Perjury. lawful authority to tender the same, and it be afterwards broken, yet if it be not in a judicial proceeding, it is no perjury, nor punishable by the common law. 3 *Inst.* 166.

Therefore if one call another a *perjured* man, he may have an action on the case, because it shall be intended to be contrary to his oath in a judicial proceeding; but for calling
calling

calling one a *forsworn* man, no action lies; because the forswearing may be extrajudicial, and consequently no perjury in law. 3 *Inst.* 166.

Of the oath of
allegiance.

7. Every layman, above the age of 12 years, was anciently obliged to take the oath of allegiance at the tourn or leet, and it was a high contempt to refuse it. 1 *Inst.* 68.

But the clergy were not obliged to take the oath of allegiance till the reformation, any further than doing homage to the king for the lands held of him in right of the church. 1 *H. H.* 71, 72.

Lord *Hale*, speaking of the ancient oath of allegiance, which continued above 600 years, says, that therein the prudence of the common law is observable, that it was short and plain, not intangled with long and intricate clauses or declarations, but that the sense of it was obvious to the most common understanding, and yet withal comprehensive of the whole duty of a subject to his prince. 1 *H. H.* 63. And from this the present form of the oath of allegiance hath not much varied.

Of the oath of
supremacy.

8. The oath of supremacy came in, upon abolishing the papal authority at the reformation.

Of the oath of
abjuration.

9. The oath of abjuration came in after the revolution; received some alterations in the first year of queen *Anne*; and again in the first year of king *George* the first; and so continues to this time.

Perhaps it might be wished, that it were made more applicable to lord *Hale's* rule, in being more short and plain; there being in it several hard words, which probably many who take it do not well understand; and there being an act of parliament therein referred to, which perhaps not one in fifty who take it have consulted.

Summoning per-
sons to take the
oaths.

10. Two justices may summon by writing under hand and seal, any person whom they shall suspect to be dangerous or disaffected to the government, to appear before them, at a certain day and time therein to be appointed, to take the oaths of allegiance, supremacy, and abjuration; and if such person neglects or refuses to appear, then on due proof made on oath of the summons having been served on such person, or left at his dwelling house, or usual place of abode, with one of the family there, they shall certify the same to the next sessions, there to be recorded by the clerk of the peace. And if such person shall neglect or refuse to appear and take the oaths at the said sessions (the name of such person being publicly read at the first meeting of the said sessions), then such person shall

be esteemed and adjudged a popish recusant convict: and the same shall be thence certified, by the clerk of the peace into the chancery or king's bench, to be there recorded. 1 G. st. 2. c. 13. s. 10, 11.

Whom they shall suspect] It seemeth that a bare suspicion is not sufficient, but there should be some good cause of suspicion, and that the cause of suspicion is traversable. *Read. Oath.*

Refuse—to take the oaths] A person cannot be said to refuse the oaths, unless they be read to him, or offered to be read. *Read. Oath.*

II. The common forms of oaths.

1. The oath of allegiance, by the 1 G. st. 2. c. 13.

Oath of allegiance.

I A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty king George: So help me god.

2. The oath of supremacy, by the 1 G. st. 2. c. 13.

Oath of supremacy.

I A. B. do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm: So help me god.

3. The oath of abjuration, by the 1 G. st. 2. c. 13.

Oath of abjuration.

I A. B. do truly and sincerely acknowledge, profess, testify, and declare in my conscience, before god and the world, that our sovereign lord king George is lawful and rightful king of this realm, and all other his majesty's dominions thereunto belonging. And I do solemnly and sincerely declare, that I do believe in my conscience, that the person pretended to be prince of Wales, during the life of the late king James, and since his decease, pretending to be, and taking upon himself, the style and title of king of England, by the name of James the third, or of Scotland, by the name of James the eighth, or the style and title of king of Great Britain, hath not any right or title whatsoever, to the crown of this realm, or any other the dominions thereto belonging: And I do renounce, refuse, and abjure any allegiance or obedience to him. And I do swear, that I will bear faith and true allegiance to his majesty king George, and him will defend, to the utmost of my

Oaths.

my power, against all traiterous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my utmost endeavour, to disclose and make known to his majesty, and his successors, all treasons and traiterous conspiracies which I shall know to be against him or any of them. And I do faithfully promise, to the utmost of my power, to support, maintain and defend the succession of the crown against him the said James, and all other persons whatsoever; which succession, by an act, intitled, An act for the further limitation of the crown, and better securing the rights and liberties of the subject, is and stands limited to the princess Sophia, Electress and dutchess dowager of Hanover, and the heirs of her body being protestants. And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a christian: So help me god.

Declaration
against transub-
stantiation,

4. The declaration against transubstantiation; by the 25 C. 2. c. 2. s. 9.

I A. B. do declare, that I do believe, that there is not any transubstantiation in the sacrament of the lord's supper or in the elements of bread and wine, at or after the consecration thereof by any person whatsoever.

Declaration
against popery.

5. The declaration against popery; by the 30 C. 2. st. 2. c. 1.

I A. B. do solemnly and sincerely, in the presence of god, profess, testify and declare, that I do believe, that in the sacrament of the lord's supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ, at or after the consecration thereof by any person whatsoever: And that the invocation, or adoration of the virgin Mary, or any other saint, and the sacrifice of the mass, as they are now used in the church of Rome, are superstitious and idolatrous: And I do solemnly in the presence of god, profess, testify and declare, That I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by English protestants, without any evasion, equivocation, or mental reservation whatsoever, and without any dispensation already granted me for this purpose by the pope, or any other authority or person whatsoever, or without any hope of any such dispensation from any person or authority whatsoever, or without thinking

thinking that I am or can be acquitted before god or man, or absolved of this declaration, or any part thereof, although the pope, or any other person or persons, or power whatsoever, shall dispense with or annull the same, or declare that it was null or void from the beginning.

III. Quakers oaths.

1. In all cases wherein by any act of parliament an oath shall be allowed or required, the solemn affirmation of quakers shall be allowed instead of such oath; and that, altho' no express provision be made for that purpose in such act. 22 G. 2. c. 46. And therefore such provisions, which are very frequent in acts of parliament, are superfluous.

2. And if any person shall be lawfully convicted of wilful, false, and corrupt affirming or declaring any matter or thing, which if sworn in the usual form would have amounted to wilful and corrupt perjury, he shall suffer as in cases of perjury. 8 G. c. 6. s. 2.

3. But no quaker shall by virtue hereof be qualified or permitted to give evidence in any criminal cause, or serve on any juries, or bear any office or place of profit in the government. 7 & 8 W. c. 34. s. 6.

In any criminal cause] By which words it seemeth, that a quaker shall not have sureties of the peace or good behaviour granted to him, or have a warrant to search for stolen goods, or sue the hundred for damages in case of robbery, and the like, upon his bare affirmation; but that in all such cases, an oath is first necessary to be made.

Thus, F. 4 G. 2. K. and Wych. It was denied to read a quaker's affirmation, on a motion for an information for a misdemeanor. Str. 872.

T. 7 G. Robins and Sayward. By the court, We cannot ground an attachment for non-performance of an award, on the affirmation of a quaker; for though it be in a suit between party and party, yet it is a criminal prosecution within the proviso of the statute. Str. 441.

H. 3 G. 2. Castell, widow, against Bambridge and Corbet. In an appeal of murder, a quaker was called for a witness, and it was insisted that this is a civil suit between party and party, and not between the king and the party, and therefore his affirmation ought to be taken. But Raymond Ch. J. said, it was to this purpose a criminal proceeding, and therefore he could not be a witness. Str. 856.

4. The quakers solemn affirmation, instead of an oath, as finally settled by the 8 G. c. 6. is as follows; viz.

"I A. B. do solemnly, sincerely, and truly declare and affirm."

Declaration of
fidelity.

5. Instead of the oaths of allegiance and supremacy, quakers shall be allowed to make the following declaration of fidelity; by the 8 G. c. 6.

I A. B. do solemnly and sincerely promise and declare, that I will be true and faithful to king George; and do solemnly, sincerely, and truly profess, testify, and declare, that I do from my heart abhor, detest, and renounce, as impious and heretical, that wicked doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath or ought to have, any power, jurisdiction, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm.

Abjuration.

6. And by the same act they shall be allowed to take the effect of the abjuration oath, in these words;

I A. B. do solemnly, sincerely, and truly acknowledge, profess, testify, and declare, that king George is lawful and rightful king of this realm, and of all other his dominions and countries thereunto belonging; and I do solemnly and sincerely declare, that I do believe the person pretended to be the prince of Wales, during the life of the late king James, and since his decease, pretending to be, and taking upon himself the stile and title of king of England, by the name of James the third, or of Scotland, by the name of James the eighth, or the stile and title of king of Great Britain, hath not any right or title whatsoever to the crown of this realm, nor any other the dominions thereunto belonging; and I do renounce and refuse any allegiance or obedience to him. And I do solemnly promise, that I will be true and faithful, and bear true allegiance to king George, and to him will be faithful, against all traiterous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my best endeavour to disclose and make known to king George, and his successors, all treasons and traiterous conspiracies, which I shall know to be against him, or any of them. And I will be true and faithful to the succession of the crown against him the said James, and all other persons whatsoever, as the same is and stands settled by an act, intituled, An act declaring the rights and liberties of the subject, and settling the succession of the crown, to the late queen Anne, and the heirs of her body, being protestants; and as the same, by one other act, intituled, An act for the further limitation of the crown, and better securing the rights and liberties of the subject, is and stands settled and intailed,

intailed, after the decease of the said late queen; and for default of issue of the said late queen, to the late princess Sophia, electress and dutchess dowager of Hanover, and the heirs of her body, being protestants. And all these things I do plainly and sincerely acknowledge, promise, and declare, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, renunciation, and promise, heartily, willingly, and truly.

7. The quakers profession of their belief; by the 1 W. ^{Profession of belief.}
c. 18.

I A. B. profess faith in god the father, and in Jesus Christ his eternal son, the true god, and in the holy spirit, one god blessed for evermore; and do acknowledge the holy scriptures of the old and new testament to be given by divine inspiration.

IV. Oaths of infidels.

1. A Jew is to be sworn on the old testament, and perjury upon the statute may be assigned upon this oath.
2 Keb. 314.

H. 2 G. 2. Gomez Serra and Munez. Upon error in debt upon a bond, the bail being both Jews, were suffered to put on their hats while they took the oath. Str. 821.

When Jews take the oath of abjuration, the words [on the true faith of a christian] shall be omitted. 10 G. c. 4. s. 18.

2. At the council, Dec. 9. 1738. Present the two chief Heathens, justices. On a complaint of Jacob Fachina against general Sabine, as governour of Gibraltar; Alderaman Ben Monso, a Moor, was produced as a witness, and sworn upon the Koran. Str. 1104.

So in the case of Omichund against Barker, H. 18 G. 2. In the court of chancery, the depositions of several persons who were heathens of the Gentou religion, sworn after their own country manner, were admitted to be read. 2 Eq. Caf. Abr. 397. Tracy Atk. 21.

Concerning the taking of oaths for qualifying for offices, see title Office.

And concerning the offences of profane cursing and swearing, see title Swearing.

Office.

I. Concerning the qualification for offices in corporations.

II. Concerning the qualification for offices in general.

III. Duty on the perquisites of offices.

I. Qualification for offices in corporations.

To receive the
sacrament, and
take the oaths.

NO person shall be placed, elected, or chosen, to any office or place of mayor, alderman, recorder, bailiff, town clerk, common council man, or other office of magistracy, place, or trust, or other employment, relating to the government of cities, corporations, boroughs, cinque ports, and other port towns, who shall not have received the sacrament according to the rites of the church of *England*, within one year next before such election: and every person so placed or elected, shall take the oaths of allegiance and supremacy, at the same time that the oath of office is taken; which shall be administered by those, who by charter or usage administer the oath of office; and in default of such, by two justices of the corporation, if there be any such; or otherwise by two justices of the county. And in default thereof every such election and placing shall be void. 13 C. 2. s. 2. c. 1. 5 G. c. 6. s. 1, 2.

And it hath been adjudged, to be no excuse, that the oaths were not tendred. 1 Haw. 10.

Yet notwithstanding that the words of this act of the 13 C. 2, (and also of the 25 C. 2. hereafter following) are so very strong as to make the officer's election void to all intents and purposes, yet it hath been strongly holden, that the acts of a person under such a disability, being instated in such an office, and executing the same without any objection to his authority, may be valid as to strangers; for otherwise not only those who no way infringe this law, but even those whose benefit is intended to be advanced by it, might be sufferers for another's fault, to which they are no way privy; and one chasm in a corporation, happening thro' the default of one head officer, would perpetually vacate the acts of all others, whose authority, in respect of their admission into their offices, or otherwise, may depend on his, 1 Haw. 10.

2. Which

2. Which said justices abovementioned shall cause memorandums to be made of such oaths taken before them, and delivered once a year to the town clerk, or other register or clerk, who shall enter the same in their books. 13 G. 2.

Entering the same.

§. 2. c. 1.

3. But no such office shall be void on account of not having received the sacrament, unless the person shall be removed in six months, or unless prosecution shall be commenced in six months, and carried on without wilful delay. 5 G. c. 6. §. 3.

Limitation of actions.

4. And by the 5 G. 3. c. 4. Persons who have omitted so to qualify, shall be indemnified, if they qualify on or before Nov. 28. 1765.

Clause of indemnification.

And by the 28 G. 2. c. 3. Persons who had omitted to take the oath of office were indemnified, if they should take the same on or before Sept. 29. 1755.

And by the 4 G. 3. c. 31. Persons whose admissions had been omitted to be stamped, were indemnified, on tendering them to be stamped, and payment of the duties, on or before Nov. 28. 1764.

And probably there may be some clause of indemnification in some future act, as there hath been from time to time heretofore.

II. Qualification for offices in general.

1. Every person who shall be admitted into any office civil or military, or shall receive any pay by reason of any patent or grant from the king, or shall have any command or place of trust in *England* or in the navy, or shall have any service or employment in the king's household; shall, within three months after his admission, receive the sacrament according to the usage of the church of *England* in some publick church on the lord's day, immediately after divine service and sermon: and in the court where he takes the oaths (as hereafter mentioned, which shall be within six months after his admission) he shall first deliver a certificate of such his receiving the sacrament, under the hands of the minister and churchwarden, and shall then make proof of the truth thereof by two witnesses on oath. And they shall also, when they take the said oaths, make and subscribe the declaration against transubstantiation. 25 C. 2. c. 2. §. 2, 3, 9.

Receiving the sacrament and subscribing the declaration.

[Any office civil or military] This seemeth evidently not to extend to ecclesiastical offices; and it may well be taken

for granted, that clergymen, need not to make such proof of their conformity to the church of *England*. But, by the following statute, they are to take the oaths as other persons qualifying for offices.

Also this shall not extend to the office of any high constable, petty constable, tithingman, headborough, overseer of the poor, churchwarden, surveyor of the highways, or any like inferior civil office, or to any office of forester, or keeper of any park, chace, warren, or game, or of bailiff of any manor or lands, or to any like private offices. *f. 17.*

Taking the
oaths.

2. Every person who shall be admitted into any office civil or military; or shall receive any pay by reason of any patent or grant from the king; or shall have any command or place of trust in *England*, or in the navy; or shall have any service or employment in the king's household; all ecclesiastical persons; heads and members of colleges, being of the foundation, or having any exhibition, of eighteen years of age; and all persons teaching pupils; schoolmasters and ushers; preachers and teachers of separate congregations; high constables, and practisers of the law, shall, within six kalendar months after such admission, take and subscribe the oaths of allegiance, supremacy and abjuration, in one of the courts at *Westminster*, or at the general or quarter sessions of the place where he shall be or reside, between the hours of nine and twelve in the forenoon, and no other; and during the time of taking thereof, all proceedings in the said courts shall cease. *1 G. 2. c. 13. f. 2. 2 G. 2. c. 31. f. 3, 4. 9 G. 2. c. 26. f. 3. 25 G. 2. c. 2. f. 2.*

But this shall not extend to the office of tythingman, headborough, overseer of the poor, churchwarden, surveyor of the highways, or any like inferior civil office, or to any office of forester, or keeper of any park, chace, warren, or game, or of bailiff of any manor or lands, or to any like private offices. *1 G. 2. c. 13. f. 20.*

Which exception is the same with that in the *25 G. 2.* save only, that *high constables* and *petty constables* by name are here omitted. *Petty constables* nevertheless seem to be excepted, as holding a *like inferior civil office* with the *tithingman* or *headborough*: But *high constables* are expressly inserted amongst the other officers required to take the oaths; although they are exempted by the former act, from being required to produce a certificate of their having received the sacrament, and from subscribing the declaration against transubstantiation.

3. And

3. And the court shall inroll such persons names, with the day and time of taking the oaths, and making the declaration, in rolls kept for that purpose only; which shall be hung up in some publick place of such court during the whole time of its sitting, to be seen without fee. 25 C. 2. c. 2. f. 6. Inrolling and fee.

And the clerk of the peace shall have no more than 2s. for the entry. 1 G. 2. c. 13. f. 9.

But no seaman or soldier, under the degree of a commission or warrant officer, shall pay any fee for taking the oaths. 1 G. 2. c. 13. f. 31.

4. Every person making default herein, shall be incapable to hold his office; and if he shall execute his office, after the said times are expired, he shall, upon conviction, be disabled to sue in any action, or to be guardian, or executor, or administrator, or capable of any legacy or deed of gift, or to bear any office, or vote at an election for members of parliament, and shall forfeit 500l. to him who shall sue for the same. 25 C. 2. c. 2. f. 4, 5. 1 G. 2. c. 13. f. 8. Penalty of executing the office unqualified.

5. But persons beyond the seas, shall not be disabled, if they shall qualify within six months after their return, 9 G. 2. c. 26. f. 4. Exception of persons beyond seas.

6. Also no married woman, or person under 18 years of age, or *non compos mentis*, shall forfeit their office (other than such married woman during the life of her husband only) if they take the oaths, and do the other things required, within four months respectively, after the death of the husband, coming to the age of 18 years, and becoming of sound mind. 25 C. 2. c. 2. f. 13. Feme covert: Infant: Non compos.

7. Likewise, by the 5 G. 3. c. 4. persons having omitted to qualify themselves in due time, shall be indemnified (if their place is not filled up), provided they qualify on or before Nov. 28. 1765. General clause of indemnification.

And there is commonly an indemnifying clause to the like purpose in some act, every two or three years.

By the 20 G. 2. c. 48. persons who had omitted to subscribe the declaration against popery, of the 30 C. 2. were indemnified, if they subscribed on or before Dec. 1. 1747. — Note; In the several acts of indemnification of late years, it seemeth to have been intended to comprehend persons who had omitted to subscribe this declaration, by reciting the said act of the 30 C. 2. in the preamble; but the same is dropped in the enacting part, by confounding (as it seemeth) the declaration against *transubstantiation* of the 25 C. 2. with the declaration against popery of the 30 C. 2.

8. Also,

Persons disqualified may take a new grant.

8. Also, any person forfeiting his office, may take a new grant thereof, on his taking the oaths, and conforming; provided it be not filled up before. 1 G. 2. c. 13. f. 14.

Persons disqualified in the universities.

9. In the universities, where persons shall not take the oaths, or shall not produce a certificate thereof, to be registered in their proper college, and others be not elected in their places within 12 months, the king shall appoint and nominate. 1 G. 2. c. 13. f. 12, 13.

Offices of inheritance may be executed by deputy.

10. Persons refusing the oaths, having any office of inheritance, may appoint a deputy, so as such deputy be approved by the king under his privy signet. 1 G. 2. c. 13. f. 18.

Note, The forms of the abovesaid oaths and declarations, are in inserted in the title *Oaths*.

III. Duty on the perquisites of offices.

Duty on the perquisites of offices.

1. By the 31 G. 2. c. 22. altered and explained by the 32 G. 2. c. 33. there are certain duties laid upon offices and pensions; and so much of the salaries of such offices, as ariseth from perquisites, is directed to be under the management of the commissioners of the land tax.

Perquisites what.

2. By *perquisites* are meant such profits of offices and employments, as arise from fees established by custom or authority, and payable either by the crown, or the subjects, in consideration of business done in the course of executing such offices or employments. 32 G. 2. c. 33. f. 8.

General duty on offices and pensions.

3. And there shall be paid yearly, over and above all other duties, 1 s. for every 20 s. of the yearly value of all salaries fees and perquisites, incident unto or received for or in respect of all offices and employments of profit in Great Britain, and the like sum of 1 s. for every 20 s. of all pensions and other gratuities payable out of any revenue belonging to his majesty in Great Britain, exceeding the value of 100 l. a year. 31 G. 2. c. 22. f. 1.

And a deduction shall be made thereof in the exchequer; or if paid by any person, and not out of the exchequer, then the same shall be paid by such person into the exchequer. 31 G. 2. c. 22. f. 2.

So much thereof as relates to perquisites, to be under the management of the commissioners of the land tax.

4. But where the profits of such offices shall arise, in the whole or in part, from perquisites due and payable in the course of office, and not from salaries, fees, and wages paid by the crown; the same shall be under the management of the commissioners of the land tax, who shall ascertain,

certain, according to the valuation of such offices to the land tax, or otherwise according to their best judgment, the sum total of the perquisites arising from such office, distinct from the salary, fees, and wages thereof. 31 G. 2. c. 22. f. 3, 5, 6. 32 G. 2. c. 33. f. 5.

5. In order whereunto the commissioners shall meet at the most common places of meeting, yearly on or before July 3d, and afterwards as often as shall be necessary; and may subdivide; and any two or more of them, at such general meeting, or within 8 days after, shall set down in writing, in a rate to be by them prepared for that purpose, the amount of the said duty of 1s. in the pound, to be paid by all officers, their clerks, or agents, exercising any of the said employments, the salary, wages, fees, and perquisites whereof exceed the value of 100l. a year. 31 G. 2. c. 22. f. 6. Manner of laying the assessment.

And for the better ascertaining thereof, the receiver to be appointed by his majesty for these duties shall transmit to the commissioners of the land tax in every district where any office is to be assessed, an account of all such offices whereof the salaries, fees, and wages do not exceed 100l. a year; and if the commissioners shall find that the perquisites arising from such office, together with the salary, fees, and wages thereof as certified by the receiver, do exceed together the amount of 100l. a year, they shall assess such office, and cause the duty of 1s. a pound to be levied and collected thereon. 32 G. 2. c. 33. f. 6.

And where any person shall have two or more offices in any part of *Great Britain*, the salary and perquisites whereof together exceed 100l. a year; such person shall pay 1s. in the pound for the profits of such offices, notwithstanding the salary and perquisites of no one of the said offices are of the value of 100l. a year. 31 G. 2. c. 22. f. 23.

And deputies shall be liable to pay for their principals, and deduct the same out of the profits of their office. f. 27.

6. Provided, that nothing herein shall extend to any salaries, fees, pensions, or perquisites belonging to the Princess dowager of Wales. 31 G. 2. c. 22. f. 8, 9. Exemptions.

Nor to the pay of commission or non-commission officers or private men serving in the navy or army. f. 24.

Nor to the pay of any military officers serving on the staff, or belonging to any of his majesty's garrisons, regiments, troops, companies, Chelsea hospital, or the hospitals of the army. 32 G. 2. c. 33. f. 11.

Nor

Nor to such pensions or gratuities as the king shall declare in the warrant directing the payment thereof, to be intended as charitable donations. 32 G. 2. c. 33. f. 10.

Nor to any pension, annuity, rent, or sum charged upon the revenue by any of the king's predecessors, or by act of parliament, granted to any person in fee or fee tail, or till redeemed by payment of any sum mentioned in any grant or act of parliament. f. 12.

Nor shall any thing in the said act of the 32 G. 2. extend to charge any offices or employments in either of the two universities, with the duty by the said act of 32 G. 2. imposed. f. 13.

Signing the assessment.

7. And the said commissioners, or any three of them, shall within the time above limited sign and seal two duplicates of the said rates, and cause one of them to be delivered to the collectors of the land tax for each place respectively, or to such other two honest and responsible persons as they shall at their discretion appoint to be collectors thereof; with warrant to collect. 31 G. 2. c. 22. f. 6.

Appeal.

8. Persons thinking themselves aggrieved by being *over-rated*, may appeal to the barons of the exchequer; and the said barons, or one of them, shall hear and determine all such appeals, on or before the last day of *Michaelmas* term yearly.—Persons charged, may inspect the rates in the day time; without fee.—Notice of appeal, to be given in writing to a collector. 31 G. 2. c. 22. f. 6.

And if any dispute shall arise, whether the fees, salary, or wages of any office or employment, or whether any pension or gratuity, be *chargeable*, or touching the sum which ought to be stopped and deducted thereout; the same shall be heard by the barons of the exchequer, on complaint or representation laid in writing before them, either by the party grieved, or by the receiver. And the complainant shall give a copy of his complaint to the person against whom the same is made, within ten days after it shall have been lodged with the barons. And they shall hear and determine such dispute in a summary way, and their determination shall be final. 32 G. 2. c. 33. f. 3. 4.

Duplicates to be transmitted.

9. The commissioners shall cause to be delivered a duplicate in parchment, under their hands and seals, containing the whole sum rated within each parish or place, to the said receiver; and another, into the remembrancer's office in the exchequer; on or before the first day of Hilary term, or within 20 days after (all appeals being first determined). 31 G. 2. c. 22. f. 6.

10. And

10. And the said duty shall be collected (where it is Collecting.
not herein otherwise directed) in all respects as the land
tax for the year 1758. 31 G. 2. c. 22. f. 7.

And in all cases where any fees, salaries, wages, or other
allowances or profits on any office, shall be payable at the
receipt of the exchequer, or by the cofferer of his ma-
jesty's household, or out of any other publick office, or by
any of his majesty's receivers or paymasters; the duty, in
case of non-payment, may be stopped there. f. 26.

11. And the payment of the said sums collected shall Collector paying
be paid to the receiver, in the course of the quarter where-
in the same shall have been deducted; who shall give re-
ceipts for the same. 31 G. 2. c. 22. f. 12. 32 G. 2.
c. 33. f. 1.

12. And the receiver shall, within the next quarter, Receiver paying
pay the same into the exchequer. 32 G. 2. c. 33. f. 1. into the exche-
quer.

Orchards. See **Wood.**

Overseers of the poor. See **Poor.**

Outlawry. See **Process.**

Pamphlets. See **Stamps.**

Paper. See **Excise.**

Papists. See **Papery.**

Parchment. See **Stamps.**

Pardon.

1. **A** Pardon is a work of mercy, whereby the king Pardon, what.
either before the attainder, sentence, or convic-
tion, or after, forgiveth any crime, offence, punishment,
execution, right, title, debt, or duty, temporal or eccle-
siastical. 3 Inst. 233.

2. Pardons are either *general* or *special*: *General*, are by General pardon.
act of parliament; of which, if they are without excep-
tions, the court must take notice *ex officio*; but if there
are exceptions therein, the party must aver that he is none
of the persons excepted. 3 Inst. 233. Hale's Pl. 252.

By the act of 20 G. 2. c. 52. for the king's general par-
don; All persons are pardoned and discharged from all trea-
sons,

sons, misprisions of treasons, felonies, treasonable and seditious words and libels, leasing making, misprisions of felony, offences whereby any person may be charged with the penalty of præmunire, riots, routs, offences, contempts, trespasses, entries, wrongs, deceits, misdemeanors, forfeitures, penalties, sums of money, pains of death, pains corporal, and pains pecuniary, and generally from all other things, causes, quarrels, suits, judgments, and executions, not by this act excepted, which can by the king be pardoned, and which were done or incurred before June 15, 1747.—Excepted, persons in the service of the pretender, or of *France* or *Spain*; forging the king's seal; coining; violating the privileges of ambassadors; murders; petty treasons; poisonings; burning of houses, corn, hay, straw, wood; shooting at any person; sending threatening letters; piracy; destroying ships; offences in the navy or army; burglary; sacrilege; robbery; sodomy; buggery; rape; perjury; subornation; forgery; felony in cases of bankruptcy; destroying banks of rivers and sea banks; firing coal pits; offences against the excise, customs, land tax, post office, stamp duties, duty on houses and windows, wool, importing or exporting goods; offences concerning highways or bridges; imbeziling goods, and warlike stores of the crown; titles of quare impedit; incest; simony; dilapidations; first fruits; tenths; money due to the king from publick officers on account; persons transported; offences by papists; contempts in causes for non-performance of awards, or non-payment of costs; contempts in ecclesiastical courts, in causes commenced for matters of right only, and not for correction; contempts in courts of admiralty proceeding civilly, and not criminally; and excepted, several persons by name.

And the like, for the most part, hath been enacted by former statutes of general pardon.

Special pardon.

3. *Special pardons*, are either *of course*, as to persons convicted of manslaughter, or *se defendendo*, and by divers statutes to those who shall discover their accomplices in several felonies; or, of *grace*, which are by the king's charter, of which the court cannot take notice *ex officio*, but they must be pleaded. 3 *Inst.* 233.

Pardon to contain the suggestion.

4. By the 27 *Ed.* 3. c. 2. In every charter of the pardon of felony, the suggestion, and the name of him that maketh the suggestion, shall be comprized; and if it be found untrue, the charter shall be disallowed.

Pardon to specify the offence.

5. And by the 13 *R.* 2. st. 2. c. 1. No charter of pardon shall be allowed for murder, treason, or rape, unless the offence be specified therein.

Lord Coke says, the intention of this act was not, that the king should grant a pardon of murder by express name in the charter, but because the whole parliament conceived that he would never pardon murder by special name. And he says, he hath never seen any pardon of murder by any king of *England*, by express name. 2 *Inst.* 233, 236.

6. The king cannot pardon an offence before it is committed; but such pardon is void. 2 *Haw.* 389.

The king cannot pardon an offence before it is committed.

7. As the release of the party will not bar an indictment at the suit of the king; so neither will a pardon by the king be any bar to an appeal at the suit of the party. 2 *Haw.* 392.

Cannot pardon an appeal.

8. And in some cases even where the king is sole party, some things there are which he cannot pardon; as for example, for all common nufances, as for not repairing of bridges or highways, the suit (for avoiding multiplicity of suits) is given to the king only, for redress and reformation thereof; but the king cannot pardon or discharge either the nuisance, or the suit for the same; because such pardon would take away the only means of compelling a redress of it. But it hath been holden by some, that a pardon of such offence will save the party from any fine, for the time precedent to the pardon. 3 *Inst.* 237. 2 *Haw.* 391.

Cannot pardon a nuisance.

9. Thus also, if one be bound by recognizance to the king, to keep the peace against another by name, and generally all other lieges of the king; in this case, before the peace be broken, the king cannot pardon or release the recognizance, altho' it be made only to him, because it is for the benefit and safety of his subjects. 3 *Inst.* 238.

Cannot discharge a recognizance.

10. Likewise, after an action popular is brought, as well for the king as for the informer, according to any statute, the king can but discharge his own part, and cannot discharge the informer's part; because by bringing of the action the informer hath an interest therein: but before the action brought, the king may discharge the whole (unless it be provided to the contrary by the act) because the informer cannot bring an action or information originally for his part only, but must pursue the statute. And if the action be given to the party grieved, the king cannot discharge the same. 3 *Inst.* 238.

Cannot release an information qui tam.

11. It seems to have been always agreed, that the king's pardon will discharge any suit in the spiritual court *ex officio*: Also it seems to be settled at this day, that it will discharge any suit in such court at the instance of the party, for the reformation of manners, or welfare of the soul, as for defamation, or laying violent hands on a clerk, and such

May discharge a suit in the spiritual court.

such like; for such suits are in truth the suits of the king, though prosecuted by the party. Also, it seems to be agreed, that if the time to which such pardon hath relation, be prior to the award of costs to the party, it shall discharge them: And it seems to be the general tenor of the books, that tho' it be subsequent to the award of the costs, yet if it be prior to the taxation of them, it shall discharge them; because nothing appears in certain to be due for costs before they are taxed. 2 *Haw.* 394.

But it seems agreed, that a pardon shall not discharge a suit in the spiritual court, any more than in a temporal, for a matter of interest or property in the plaintiff; as for tithes, legacies, matrimonial contracts, and such like. 2 *Haw.* 394.

Doth not by releasing a man release his partner. 12. If the king release to a man all debts, this shall not discharge his partner; but otherwise it is in case of a subject, for in that case the release to one dischargeth both. 3 *Inst.* 239.

Person pardoned may be bound to the good behaviour. 13. When a pardon is pleaded by any one for felony, the justices may at their discretion remand him to prison till he enter into recognizance, with two sureties, for his good behaviour, for any time not exceeding seven years. 5 *W. c.* 13.

Pardon doth not restore lands or goods forfeited. 14. It seems to be a settled rule, that no pardon by the king, without express words of restitution, shall devert, either from the king or subject, an interest either in lands, or goods, vested in them, by an attainder or conviction precedent: Yet it seems agreed, that a pardon prior to a conviction, shall prevent any forfeiture either of lands or goods. 2 *Haw.* 396.

Doth not restore the corruption of blood. 15. A pardon after the attainder doth not restore the corruption of blood, for this cannot be restored but by act of parliament. 3 *Inst.* 233.

But as to issue born after the pardon, it hath the effect of a restitution of blood. 1 *H. H.* 358.

Doth restore the credit. 16. It seems to be settled at this day, that the pardon of a treason or felony, even after a conviction or attainder, doth so far clear the party from the infamy and all other consequences of his crime, that he may not only have an action for a scandal, in calling him traitor or felon, after the time of the pardon, but may also be a good witness, notwithstanding the attainder or conviction; because the pardon makes him as it were a new man, and gives him a new capacity and credit. 2 *Haw.* 395.

But it seems to be the better opinion, that the pardon of a conviction of *perjury* doth not so restore the party to his credit

credit, as to make him a good witness, because it would be an injury to the people in general, to make them subject to such a person's testimony. 1 Vent. 349.

Parliament.

1. BY the 18 G. 2. c. 18. No person shall vote in the election of a knight of the shire, in respect of any lands which have not been assessed to the land tax 12 calendar months next before such election.—And three commissioners of the land tax shall sign and seal a duplicate of the assessments (to be delivered to them by the assessors) after all appeals determined, and deliver the same to the clerk of the peace, to be kept amongst the records, and be inspected by any person at seasonable times (paying 6d. for such inspection), and the clerk of the peace shall give copies to any person paying after the rate of 6d. for every 300 words. Electors to be assessed to the land tax.

2. By the 2 G. 2. c. 24. which act is required to be read at every *Easter* sessions, the returning officer of a member of the house of commons, shall after reading the writ, and before the election, take the oath against bribery, and that he will make a due return; to be administered by one justice (or in his absence by three of the electors) and entered amongst the records of the sessions. Election

And by the 9 An. c. 5. The oath of the qualification of a candidate shall be administered by two justices, who shall certify the same in three months into the chancery or king's bench, on pain of 100l. And thereupon no fee shall be paid, but 1 s. for the oath, 2 s. for the certificate, and 2 s. for the filing.

And by the 10 An. c. 23. The sheriff in 20 days after the election shall deliver the poll books upon oath to the clerk of the peace, to be kept among the records of the sessions; which oath shall be administered by the two next justices (1 Q.)

3. A member of parliament shall have the privilege of parliament, not only for himself and his servants, to be freed from arrests, subpcena, citations, and the like; but also for his horses and goods to be free from distresses: but for treason, felony, and breach of the peace, there can be no privilege. 4 Inst 24, 25. Privilege:

And *libels* have been so far construed to come under the notion of a breach of the peace, that by a resolution of the house of commons, Nov. 24. 1763, in the case of *John Wilkes*, esquire, it is declared, that privilege of parliament doth not extend to the case of writing and publishing seditious libels, nor ought to be allowed to obstruct the ordinary course of the laws, in the speedy and effectual prosecution of so heinous and dangerous an offence.

And so likewise in the case of a *contempt* to the courts of *Westminster* hall, T. 31 G. 2. *Rex v. Earl Ferrers*: A writ of *habeas corpus* having been granted, and served upon the said earl, returnable *immediate*, to bring up the body of his countess, who was sister to Sir *William Meredith*, (to the end that she might have an opportunity to lay her case before the court, and swear the peace if she should think proper, thereby to receive the protection of the court against the said earl); and he the said earl having neglected to return the said writ; Mr *Norton* and the other counsel for Sir *William Meredith*, on behalf of his sister, intended to have moved for an attachment against the earl for this his disobedience. But some doubts and difficulties having been started by members of both houses, concerning the privilege of peerage, and whether the court of king's bench could issue an attachment against a peer during the sitting of parliament, and execute it upon him, only for a contempt to their court; Sir *William* judged it prudent to petition the house of lords, for their leave to proceed against the earl, and accordingly (by the hands of the earl of *Westmoreland*) delivered a petition, stating the facts. Lord *Delaware* opposed it; and said, it was too summary and hasty a method of determining upon their privileges; and proposed referring the matter to a committee, and summoning lord *Ferrers* to answer it in his place: And to obviate the objections, which might be made to this method, on account of the delay; he offered some schemes for the intermediate safety of the countess. But lord *Mansfield* answered him, and spoke in support of the jurisdiction of his court, and the unreasonableness, injustice, and inconvenience of allowing such a privilege, in criminal cases and breaches of the peace. The duke of *Argyle* spoke to the like effect, and expressed a surprize that there should be any doubt about it; the reason of the thing being so clear and plain. Lastly, the earl of *Hardwicke* spoke strongly and particularly in support of the same doctrine, and adduced many instances and precedents

dents in proof of his positions; and concluded with proposing, that to put an end to all doubt about it for the future, the lords should come to a resolution; and accordingly they did come to the following resolution or declaration, and ordered it to be entered on their journal, viz. "7 Febr. 1757, It is ordered and declared, that no peer or lord of parliament hath privilege against being compelled by process of the courts of *Westminster* hall, to pay obedience to a writ of *habeas corpus* directed to him." *Burrow*. 631.

And by the 12 & 13 *W. c.* 3. and 11 *G. 2. c.* 24. Actions may be commenced and proceeded on, against peers or members of parliament, immediately after any dissolution, or prorogation for above 14 days, until they meet again.—Allowing nevertheless a reasonable time for their return from parliament; for their privilege existeth, not only during the time of their sitting, but for a reasonable time both before and after, for their going and returning. *Str.* 985. *Col. Pitt's* case.

But by a resolution of the house of commons, *Mar.* 23. 1696, it is declared, that no member of that house hath any privilege against payment of any aids, supplies, or taxes granted to his majesty, or any parish duties.

4. If at any time in case of invasion, or upon imminent danger thereof, or in case of rebellion, the parliament shall happen to be separated by such adjournment or prorogation, as will not expire within 14 days; it shall be lawful for his majesty to issue a proclamation for the meeting of the parliament upon such day as he shall thereby appoint, giving 14 days notice of such appointment; and the parliament shall accordingly meet upon such day, and continue to sit and act as if it had stood adjourned or prorogued to the same day. 2 *G. 3. c.* 20. *f.* 117.

5. By the 7 & 8 *W. c.* 15. The parliament shall not be dissolved by the king's death or demise, but shall continue to sit and act for six months, unless sooner dissolved by the successor: and if there be no parliament; the next preceding parliament shall meet and act, as if they had not been dissolved.

To meet in case of invasion.

In case of the king's death or demise.

Partition.

BY the 8 & 9 *W. c.* 31. intituled, An act for the easier obtaining partitions of lands in coparcenary, joint-tenancy, and tenancy in common, it is enacted, that if the high sheriff cannot conveniently be present at the execution of any judgment in partition, in such case the under sheriff in presence of two justices may proceed to execution of the writ of partition.

Partridge. See **Game**.

Pawning of goods. See **Cheat**.

Peace. See **Surety**.

Pedlars. See **Hawkers**.

Peers.

Not conservators
of the peace.

I. **D**UKES, earls, and barons are not conservators of the peace at common law; and have no more power as such, than mere private persons. 2 *Haw.* 32.

Sureties of the
peace against
them.

2. The safest way of proceeding against a peer, for sureties of the peace or good behaviour, is by complaint to the court of chancery or king's bench. 1 *Haw.* 127.

Trial of peers.

3. A nobleman must be tried by his peers: but this is to be understood only at the suit of the king, upon an indictment of high treason, petit treason, felony, or imprisonment thereof; but in case of a præmunire, riot, or the like, and generally for all other crimes out of parliament, (unless otherwise specially provided for by statute, as it is in many instances), tho' it be at the suit of the king, he shall not be tried by his peers, but by the freeholders of the county. 3 *Inst.* 30. 2 *Haw.* 424.

Whether they
may be out-
lawed.

4. Process of outlawry lies against a peer, if he be indicted, and appears not, and cannot be taken; otherwise he must take advantage of his own contumacy. 3 *Inst.* 31.

Whether they
shall be burnt in
the hand.

5. Peers shall have the benefit of clergy for the first offence of felony, without burning in the hand. 1 *Ed.* 6. c. 12. f. 14.

Evidence.

6. A peer produced as a witness ought to be sworn. 3 *Keb.* 631.

Perry. See **Excise**.

Perjury

Perjury and Subornation.

I. Of perjury and subornation by the common law.

II. Of perjury and subornation by the statute of the
5 El.

III. Of matters common to them both.

I. Of perjury and subornation by the common law.

PERJURY by the common law seemeth to be a Perjury at the
common law.
wilful false oath, by one who being lawfully required to depose the truth in any judicial proceeding, swears absolutely, in a matter material to the point in question, whether he be believed or not. 1 Haw. 172. 3 Inst. 164.

Wilful] The false oath alledged against him, should be proved to be taken with some degree of deliberation; for if upon the whole circumstances of the case it shall appear probable, that it was owing rather to the weakness than perverseness of the party, as where it was occasioned by surprize, or inadvertency, or a mistake of the true state of the question, it cannot but be hard to make it amount to voluntary and corrupt perjury. 1 Haw. 172.

False] It is said not to be material, whether the fact which is sworn, be in itself true or false; for however the thing sworn may happen to prove agreeable to the truth, yet if it were not known to be so by him who swears to it, his offence is altogether as great as if it had been false, inasmuch as he wilfully swears that he knows a thing to be true, which at the same time he knows nothing of, and impudently endeavours to induce those before whom he swears, to proceed upon the credit of a deposition, which any stranger might make as well as he. 1 Haw. 175.

Being lawfully required] It seemeth clear, that no oath whatsoever, taken before persons acting merely in a private capacity; or before those who take upon them to administer oaths of a publick nature, without legal authority; or before those who are legally authorized to administer some kinds of oaths, but not those which happen to be taken before them; or even before those who take upon them to administer justice by virtue of an authority

Perjury and Subornation.

thority seemingly colourable, but in truth unwarranted and merely void,—can amount to perjuries, but are altogether idle and of no force. 1 *Haw.* 174.

In any judicial proceeding] For tho' an oath be given by him that hath lawful authority, and the same is broken, yet if it be not in a judicial proceeding, it is not perjury; because such oaths are general and extrajudicial: but it serves for aggravation of the offence. Such are, general oaths given to officers or ministers of justice, the oath of fealty and allegiance, and such like. Thus if an officer commit extortion, it is against his general oath, but yet not perjury, because not in a judicial proceeding; but when he is charged with extortion, the breach of his oath may serve for aggravation. 3 *Inst.* 166.

If a person calleth another *perjured* man, he may have his action upon his case, because it must be intended contrary to his oath in a judicial proceeding; but for calling him a *forsworn* man, no action doth lie, because the forswearing may be extrajudicial. 3 *Inst.* 166.

Swears absolutely] For the deposition must be direct and absolute; and not, as he thinketh, or remembreth, or believeth, or the like. 3 *Inst.* 166.

In a matter material to the point in question] For if it be not material, then tho' it be false, yet it is no perjury, because it concerneth not the point in issue, and therefore in effect it is extrajudicial. 3 *Inst.* 167.

But it is not necessary that it appear to *what degree*, the point in which a man is perjured, was material to the issue; for if it is but circumstantially material, it will be perjury. *L. Raym.* 258.

Much less is it necessary that the evidence be sufficient for the plaintiff to recover upon; for in the nature of the thing, an evidence may be very material, and yet it may not be full enough to prove directly the point in question. *L. Raym.* 889.

Whether he be believed or not] It hath been holden, not to be material upon an indictment of perjury at common law, whether the false oath were at all credited, or whether the party in whose prejudice it was intended, were in the event any way aggrieved by it or not; inasmuch as this is not a prosecution grounded on the damage of the party, but on the abuse of publick justice. 1 *Haw.* 177.

2. Subornation of perjury, by the common law, seems to be an offence, in procuring a man to take a false oath, amounting to perjury, who actually taketh such oath. 1 Haw. 177. Subornation at common law.

But it seemeth clear, that if the person incited to take such an oath, do not actually take it, the person by whom he was so incited is not guilty of subornation of perjury; yet it is certain, that he is liable to be punished, not only by fine, but also by infamous corporal punishment. *id.*

3. The punishment of perjury, and subornation of perjury by the common law, is restrained by the statute of the 5 El. hereafter following; that it shall not be less, than is inflicted by that statute. Punishment of perjury and subornation by the common law.

4. Mr. *Hawkins* says, it hath been of late settled, that justices of the peace have no jurisdiction over perjury at the common law; the principal reason of which resolution, he says, as he apprehended, was, that inasmuch as the chief end of the institution of the office of these justices was, for the preservation of the peace against personal wrongs and open violence, and the word *trespass* (in the commission) in its most proper and natural sense, is taken for such kind of injuries, it shall be understood in that sense only, or at the most to extend to such other offences only, as have a direct and immediate tendency to cause such breaches of the peace; as libels and such like, which on this account have been adjudged indictable before justices of the peace. 2 Haw. 40. Power of justices of the peace therein.

And in the case of *K. and Bainton, E. 11 G. 2.* An indictment at the quarter sessions for perjury at the common law, was quashed for want of jurisdiction; and was said to have been done so about three years before, in the case of *K. and Westines.* Str. 1088.

II. Of perjury and subornation by the statute of the 5 El.

As to subornation of perjury, in the first place, Every person who shall unlawfully and corruptly procure any witness to commit any wilful and corrupt perjury, in any matter or cause depending in suit and variance, by any writ, action, bill, complaint, or information, touching any lands, tenements, or hereditaments, or any goods, chattels, debts, or damages; in chancery, or in any court of record, leet, ancient demesne court, hundred court, court baron, or court of chancery; or shall unlawfully and corruptly procure or suborn any witness which shall be sworn to testify in perpetuam rei memoriam, — shall for-

Perjury and Subornation.

feit 40l. half to the king, and half to the party grieved who shall sue for the same. And if he has not lands or goods worth 40l. he shall be imprisoned half a year, and stand on the pillory an hour in open market. And he shall be disabled to be a witness in any court of record.

And as to perjury, If any person either by subornation or otherwise, shall wilfully and corruptly commit any wilful perjury, by his deposition in any of the courts before mentioned, or being examined in perpetuam rei memoriam; he shall forfeit 20l. in like manner, and be imprisoned six months; and if he has not goods worth 20l. he shall be set on the pillory in the market place by the sheriff, and have both his ears nailed. And he shall be for ever disabled to be a witness in any court of record.

And the judge of the court, where the perjury shall be, and the judges of assize, and justices of the peace in sessions, may inquire, hear, and determine thereof, by inquisition, presentment, bill, or information, or otherwise.

But this act shall not extend to any ecclesiastical court.

Also this statute shall not restrain the authority of any judge, having absolute power to punish perjury before the making thereof, but that every such judge may proceed in the punishment of all offences punishable before the making of the said statute, in such wise as they might have done, and used to do, to all purposes, so that they set not upon the offender less punishment, than is contained in the said statute. 5 El. c. 9.

Any witness] If the defendant perjureth himself in his answer, in the chancery, exchequer chamber, or the like, he is not punishable by this statute; for it extendeth but to witnesses. 3 Inst. 166.

By any writ, action, bill, complaint, or information] It hath been resolved, that these words are to be extended to the latter clause concerning perjury, as well as to this concerning subornation; because it cannot well be intended, that the makers of the act, who inflict a greater penalty on subornation of perjury, than on the perjury itself, should mean to extend the purview of the law in relation to what they esteemed the lesser crime, farther than in relation to that which they esteemed the greater. 1 Haw. 179. 5 Co. 99.

But it is to be observed, that perjury or subornation in an action depending by indictment, are not within this statute; but only in an action depending by writ, action, bill, complaint, or information. 3 Inst. 164.

Half

Half to the party grieved] It hath been collected from this clause, that no false oath is within the meaning of this statute, which doth not give some person a just cause of complaint: and upon this ground it hath been said, that he who swears a thing which is true, but not known by him to be so, is not within this statute; because howsoever heinous his offence may be in its own nature, yet when it proves in the event to be in maintenance of the truth, it cannot be said to give him a just cause of complaint, who would take advantage against another from his want of legal evidence to make out the justice of his cause. Also from the same ground it seemeth clearly to follow, that no false oath can be within the statute, unless the party against whom it was sworn suffered some kind of disadvantage by it; for otherwise it cannot be said, that any one was grieved by it: and therefore that in every prosecution upon this statute, it must appear upon the trial, that there was such a suit depending, wherein the party might be prejudiced in the manner supposed. 1 Haw. 181.

Either by subornation or otherwise] It is not necessary to set forth in the indictment, whether the party took the false oath thro' the subornation of another, or without any such subornation, these words being only superfluity. 1 Haw. 179.

Wilfully and corruptly] These words are necessary in an indictment or action on this statute, and cannot be supplied by adding *against the form of the statute*, or by concluding *and so a wilful and corrupt perjury did commit*. 1 Haw. 178.

Justices in sessions] And one justice (Mr. Dalton says) may bind the offender over to the sessions. *Dalt. c. 70.*

But because the prosecution upon this statute is more difficult than by indictment at the common law, offenders are seldom prosecuted upon this statute, especially at the sessions; and it seems generally the safer way to proceed by indictment at the common law, at the assizes, or in the court of king's bench.

Shall not restrain] From this it seemeth undoubtedly to follow, that the court of king's bench, &c. proceeding upon an indictment or information of perjury or subornation of perjury at the common law, may not only set a discretionary fine on the offender, but also condemn him to the pillory, without making any inquiry concerning the value of his lands or goods. 1 Haw. 178.

III. Of

III. Of matters common to them both.

Judges may direct prosecutions for perjury.

1. The judge of assize (sitting the court, or within 24 hours after) may direct any witness, if there shall appear to him a reasonable cause, to be prosecuted for perjury; and may assign the party injured, or other person undertaking such prosecution, counsel, who are to do their duty *gratis*: and such prosecution so directed shall be carried on without any duty or fees whatsoever. And the clerk of assize, or other proper officer of the court, shall give *gratis* to the party injured, or prosecutor, a certificate of the same being directed, together with the names of the counsel assigned him: Which certificate shall be sufficient proof of such prosecution being directed; provided that no such direction or certificate shall be given in evidence on the trial. 23 G. 2. c. 11. s. 3.

On prosecution for perjury, it shall be sufficient to set forth the substance of the offence.

2. And in every information or indictment for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence, and by what court, or before whom the oath was taken (averring such court or person to have a competent authority to administer the same) together with the proper averment or averments to falsify the matter wherein the perjury is assigned, without setting forth any part of the record or proceedings either in law or equity (other than as aforesaid), or the authority of the court or person before whom the perjury was committed. 23 G. 2. c. 11. s. 1.

Likewise on a prosecution for subornation.

3. And in informations or indictments for *subornation* of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence, without setting forth any part of the record or proceedings, or the commission or authority of the court or person before whom the perjury was committed, or was agreed or promised to be committed. 23 G. 2. c. 11. s. 2.

Insufficient indictment not quashed without pleading or demurrer.

4. The court generally will not quash an indictment for a crime of so enormous a nature as perjury, for insufficiency in the caption or body of it, but will oblige the defendant either to plead or demur to it. 2 Haw. 258.

Evidence.

5. To convict a man of perjury, a probable evidence is not enough; but it must be a strong and clear evidence, and the witnesses must be more numerous than those on the side of the defendant, for otherwise it is only oath against oath. 10 Mod. 194.

And

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And the party prejudiced by the perjury, shall not be admitted to prove the perjury. *L. Raym.* 396.

6. And for a further punishment of perjury or subornation of perjury, it is enacted by the 2 G. 2. c. 25. (which act is made perpetual by the 9 G. 2. c. 18.) that besides the punishment already inflicted, the judge may order the offender to be sent to the house of correction, not exceeding 7 years, to be kept to hard labour; or otherwise to be transported for any term not exceeding 7 years. Further punishment of perjury or subornation.

7. It seems that the court will not ordinarily at the prayer of the defendant grant a certiorari for the removal of an indictment of perjury; for such crime deserves all possible discountenance, and the certiorari might delay, if not wholly discourage the prosecution. *2 Haw.* 287. Certiorari.

8. A person convicted of perjury is disabled from being a juror. *2 Haw.* 417. Or a witness. *2 Haw.* 433. Perjured person not to be a juror, or a witness.

9. Quakers making solemn affirmation wilfully and corruptly, shall suffer as in cases of perjury. *8 G. c. 6.* Quakers.
f. 2.

10. Perjury and subornation are excepted out of the general pardon of the 20 G. 2. c. 52. Pardon.

Personating Bail. See *Bail*.

Petition.

BY the 13 C. 2. c. 5. No person shall solicit above 20 hands, to any petition to the king, or either house of parliament, for alteration of matters established by law in church or state, unless the matter thereof hath been consented to by three or more justices of the county, or by the major part of the grand jury at the assizes or sessions; nor shall present any such petition accompanied with more than ten persons, on pain of a sum not exceeding 100*l.* and three months imprisonment, on conviction at the assizes or sessions in six months, and proved by two witnesses.

But this shall not extend to debar any persons (not above ten in number), to present any complaint to any member of parliament after his election, and during the continuance of parliament, or to the king, for any remedy to be thereupon had; nor to any address to the king by the parliament.

Petit larceny. See *Larceny*.

Petit treason. See *Treason*.

Pewee

Pewter and other metals.

Imported.

I. **N**O person shall buy, or take by exchange, (or otherwise take into or within this realm to the intent to sell the same, 33 *H. 8. c. 4. f. 7.*) any wares made out of the realm, of tin or mixed with tin, as dishes, sawcers, flagons, spoons, or any other thing made of tin or pewter; on pain of forfeiting the same, and the value thereof, half to the king, and half to the finder. 25 *H. 8. c. 9. f. 1.*

And the master and wardens of the pewterers, and where there are none, the head officer of the town may appoint searchers, who may seize the same. *f. 2.*

And persons interrupting or disturbing the said seizure, shall forfeit 5*l.* half to the king, and half to him that shall sue. 33 *H. 8. c. 4. f. 8.*

Fineness in making.

2. No person shall cast or work any pewter vessel or brass, but that it be as good fine metal as the pewter and brass wrought in *London*, and as by the statutes of the same ought to be; on pain of forfeiting the same, half to the king, and half to the finder. But this not to extend to brass or pewter in the possession of any person, other than the worker, or such as have the same to sell, and being of the crafts or misteries. 19 *H. 7. c. 6.*

And no person shall make any hollow wares of pewter, to wit, salts and pots made of pewter called ley-metal, but after the assize of pewter and ley-metal within *London*; and the makers shall mark them with their own mark, that they may avow the same by them wrought; and the same not sufficiently made and wrought, and not marked, found in the possession of the maker or seller, shall be forfeited; and if the same be sold, the maker shall forfeit the value thereof, half to the king, and half to the finder or searcher. *id.*

And the master and wardens of the craft of pewterers, and where there are none such, the head and governors of the city or borough, may appoint searchers; and the justices at *Michaelmas* sessions shall appoint two persons, having experience therein, to search within the county. And of all such unlawful pewter or brass as they shall find, half shall be to the king, and half to the searchers. *id.*

And in default of the master and wardens not searching, any person having sufficient knowledge in the said occupation,

tion, by oversight of the mayor or other head officer of cities or boroughs may search. *id.*

3. If any untrue metal or workmanship of tin or pew- ^{Offering to sale.} ter be found in any wares brought to be sold, the mayor of *London*, and the master and wardens of the pewterers, may search the same in the said city; and in all other cities and towns where there are wardens, the mayors and wardens shall have like authority; and where there are no wardens, then the head officers of cities or towns shall appoint searchers; and if such new wares wrought of tin and pewter be found defective, and in the possession of the seller, the person putting them to sale shall forfeit the same, half to the king, and half to the searcher or finder. 4 *H.* 8. c. 7. f. 7.

4. No person using the crafts of pewterer and brazier, ^{Selling, where.} shall sell or change any pewter or brass, at any place, but only in open fair or market, or in his own dwelling house, except he be desired by the buyer of such ware; on pain of 10 l. half to the king, and half to him who shall seize or sue. 19 *H.* 7. c. 6. 25 *H.* 8. c. 9. f. 6.

5. Persons using the buying and selling of pewter, or ^{Falſe weights.} brass, who shall occupy any false beams or weights, and every person using the same, shall forfeit 20s. half to the king, and half to him that shall sue; and also the beams to him that shall seize them. 19 *H.* 7. c. 6.

And if the offender be not sufficient to pay the forfeiture, the mayor or other head officer, where he shall be found, shall put him in the stocks, and so keep them till the next market day next adjoining, and in the market place put him in the pillory all the market time. *id.*

6. No person shall carry over sea, any brass, copper, ^{Exporting.} latten, bell metal, pan metal, gun metal, nor shroff metal, whether it be clean or mixed (tin and lead only excepted); on pain of forfeiting double the value thereof (and 10 l. for every thousand weight, 2 & 3 *Ed.* 6. c. 37.) half to the king, and half to him that shall sue. 33 *H.* 8. c. 7.

Pheasants. See Game.

Physicians.

Physicians.

Recusants not to
practise physick.

1. NO recusant convict shall practise physick, nor use the trade of an apothecary, on pain of 100 l.

3 *J. c. 5. f. 8.*

Apothecary ex-
empted from of-
fices.

2. Apothecaries within *London* and seven miles thereof, and also apothecaries in any other place who have served seven years apprenticeship, shall be exempted from the office of constable, scavenger, overseer of the poor, and all other parish, ward, and leet offices, and from being put on any jury or inquest. 6 *W. c. 4.*

Surgeons ex-
empted from of-
fices.

3. By the 5 *H. 8. c. 6.* Surgeons shall be discharged of the constableship, watch, and all manner of office bearing any armour, and also of all inquests and juries within *London*.

And by the 18 *G. 2. c. 15.* All freemen of the surgeons company in *London*, shall be exempted from the office of constable, scavenger, overseer of the poor, and other parish, ward, and leet offices, and from serving on juries and inquests. *f. 10.*

And Mr. *Hawkins*, speaking of the former of these statutes, says; it seems that by the equity thereof, and the ancient custom of the realm, all surgeons have been allowed the like privilege; that is, whether in *London* or elsewhere. 2 *Haw. 64.*

Physicians ex-
empted from of-
fices.

4. By the 32 *H. 8. c. 40.* The president of the comonalty and fellowship of the faculty of physick in *London*, and the commons and fellows of the same, shall be discharged of watch and ward there, and shall not be chosen constable, or any other officer. *f. 1.*

Yet it seems to have been holden, that the equity of this act, doth not extend to other physicians not mentioned in it; perhaps for this reason, because physicians have no such special custom for their discharge, as surgeons are said to have. 2 *Haw. 64.*

And it seemeth that a practising physician, being chosen constable in pursuance of a custom in respect of his lands in a town, has no remedy for his discharge; for that there are no precedents of this kind, and his calling is private; yet if he be chosen constable of a town, which hath sufficient persons besides to execute this office, and no special custom concerning it, perhaps he may be relieved by the king's bench. 2 *Haw. 63.*

5. All justices, mayors, sheriffs, bailiffs, constables, and other officers in *London*, shall assist the president of the college of physicians, and persons by them authorized, in searching for faulty apothecary wares. *1 Mar. sess. 2. c. 9. s. 6.* Searching for drugs.

6. If a physician gives a person a potion without any intent of doing him any bodily hurt, but with intent to cure or prevent a disease, and contrary to the expectation of the physician it kills him, this is no homicide; and the like of a surgeon. And I hold their opinion (says lord *Hale*) to be erroneous, that think if he be no licensed surgeon or physician, that occasioneth this mischance, that then it is felony; for physick and salves were before licensed physicians and surgeons; and therefore if they be not licensed according to the statute of the 3 *H. 8. c. 11.* or 14 *H. 8. c. 5.* they are subject to the penalties in the statutes, but god forbid that any mischance of this kind should make any person not licensed guilty of murder or manslaughter. These opinions therefore may serve to caution ignorant people not to be too busy in this kind in tampering with physick, but are no safe rule for a judge or jury to go by. *1 H. H. 429.* Physician killing a patient.

Pick-pocket. See *Larceny*.

Pigeons. See *Game*.

Pillory and tumbrel.

1. **PILLORY** is derived from *pilastre*, a pillar; for it is a wooden pillar, wherein the neck of the offender is put and pressed: which kind of punishment is very ancient, and was used by the *Saxons*. *3 Inst. 219.* Pillory and tumbrel, what.

The *tumbrel* seemeth to have been the same anciently with the *ducking stool*; an engine for the punishment of scolding women, by ducking them over head and ears in water, and especially in muddy or stinking water, according to the etymology of lord *Coke*, who tells us, that the word *tumbrel* signifieth a dung cart. *Lamb. 61. 3 Inst. 219.*

2. Every one that hath a leet or market, ought to have a pillory and tumbrel to punish offenders; and it seems that a leet may be forfeited for not taking care to have a pillory and tumbrel. *3 Inst. 219. 2 Haw. 75.* Who shall find them.

3. They

Pillory and tumbrel.

Infamy of the punishment.

3. They that have been adjudged to the pillory or tumbrel, are so infamous, that they shall not be received to be jurors or witnesses. 3 *Inst.* 219.

Caution in inflicting it.

4. And for that the judgment to the pillory or tumbrel doth make the delinquent infamous, the justices of the peace should be well advised before they give judgment of any person to the pillory or tumbrel, unless they have good warrant for their judgment therein. Fine and imprisonment, for offences fineable by them, is a fair and sure way. 3 *Inst.* 219.

Inflicted by several statutes.

5. But by several statutes the punishment of the pillory is specially ordained; as in the case of bakers, forestallers, users of false weights, and many others.

Plague.

Quarentine enjoined.

1. **A**LL vessels, persons, and goods coming from any place, from whence the king, with the advice of his privy counsel, shall judge probable that the infection may be brought, shall be obliged to make their quarentine in such places, for such time, and in such manner as shall be directed by him, or by his order made in council, and notified by proclamation, or published in the gazette. 26 G. 2. c. 6. s. 1.

Orders for quarentine to be read in churches.

2. And when the king shall make any orders concerning quarentine, and notify the same by proclamation, or in the gazette, the same shall be publicly read the next *sunday*, and the first *sunday* in every month afterwards (during the time such orders shall continue) immediately after prayers, in all places set apart for divine worship, within such places as shall be specified in such proclamation or orders. *id.* s. 20.

Watchmen to be appointed.

3. And the justices of the counties adjoining, or one of them, shall forthwith, when quarentine shall be appointed, cause watches to be kept by day and night, in the most proper and convenient places, within the several adjacent parishes; who shall not permit any person whatsoever to come on shore from, or go on board any ships under quarentine, except only such as shall have the charge of seeing the quarentine duly performed, or as shall be licensed by such person having charge of the quarentine. 9 *An.* c. 2.

And

And if any superintendant of the quarentine, or watchman, shall neglect his duty, he shall be guilty of felony without benefit of clergy. 26 G. 2. c. 6. s. 17.

4. And if the plague shall appear on board any ship, being to the northward of *Cape Finisterre*, the master shall immediately proceed to the harbour of [*St. Helen's Pool*, between the uninhabited islands of *St. Helen's*, *Tean*, and *North Withell*, or to such other place as his majesty by advice of his privy council shall appoint; 29 G. 2. c. 8.] where he shall make known his case to some officer of the customs; who shall immediately acquaint some custom house officer of some near port of *England*; who shall with all possible speed send intelligence thereof to a secretary of state: and the ship shall remain there till his majesty's pleasure be known; nor shall any of the crew go on shore.

Masters of ships to give notice.

But if he shall not be able to make the islands of *Scilly*, or shall be forced by weather or otherwise to go up either of the channels, he shall not enter any port, but remain in some open road, till he receives orders from his majesty or his privy council; and shall prevent any of the crew from going out of the ship, and avoid all intercourse with other ships or persons. And the said master or any other person on board, who shall be disobedient herein, shall be guilty of felony without benefit of clergy; and may be tried where the offence shall be committed, or where he shall be apprehended. 26 G. 2. c. 6. s. 2.

5. And when any country or place is infected, or when any order shall be made by the king concerning quarentine, as often as any vessel shall attempt to enter into any port, the principal officer of the customs there, or such person as shall be authorized to see quarentine performed, shall go off, or cause some other person to go off, to such vessel; who shall at a convenient distance, demand of the commander, the name of the ship; the name of the commander; at what place the cargo was taken on board; what place the vessel touched at in her voyage; whether such places, or any, and which, were infected with the plague; how long she hath been in her passage; how many persons were on board when she set sail; whether any, and what persons, during the voyage, have been or are infected; how many died in the voyage, and of what distemper; what vessels he, or any of his company with his privy, went on board, or had any of their company come on board his ship, and to what place they belonged; and also the true contents of his lading, to the best of his knowledge: And if it shall appear on such examination, or otherwise,

Vessels to be examined.

otherwise, than any person on board is infected, or that such ship is obliged to perform quarantine; the officers of any of his majesty's ships of war, or of any forts or garrisons, and all other his majesty's officers whom it may concern, and others whom they shall call to their assistance, shall, on notice thereof, oblige such ship to repair to the place appointed for quarantine, be it by firing of guns, or other force: And if such vessel shall come from any place infected, or have any person on board infected, and the master shall conceal the same, he shall be guilty of felony without benefit of clergy; and if he shall not make a true discovery in any other of the particulars, he shall forfeit 200 l. half to the king, and half to him that shall sue. 26 G. 2. c. 6. f. 3.

Officer neglecting.

6. And if any officer of the customs, or other officer, shall neglect his duty herein; he shall forfeit his office, and 100 l. in like manner. 26 G. 2. c. 6. f. 11.

Master to deliver his credentials.

7. And the master, after his arrival at the place of quarantine, shall deliver on demand to the chief officer appointed to see quarantine duly performed, such bill of health and manifest as he shall have received from any *British* consul, together with his log-book and journal; on pain of 500 l. in like manner. 26 G. 2. c. 6. f. 4.

Obedience enforced.

8. And all persons, liable to perform quarantine, shall be subject to such orders as they shall receive from the officers authorized to see it performed; who shall have power to enforce obedience, and in case of necessity to call others to their assistance. 26 G. 2. c. 6. f. 9.

Ships' boats may be seized.

9. And any officer of the customs, or others, directed to take care of the quarantine, may seize any boat belonging to such vessel, and detain the same till quarantine be performed. 9 An. c. 2.

Penalty of quitting the ship.

10. And if the commander of the ship shall go himself, or permit any seaman or passenger to go on shore, or on board any other vessel, during the quarantine, without licence of the person having charge of the quarantine; the ship and tackle shall be forfeited to the king. 9 An. c. 2.

And if any person shall come on shore, or go aboard, any other ship; the persons appointed for seeing quarantine duly performed, may compel him to return and continue during the quarantine: And such person so leaving such ship, and being thereof (after expiration of the quarantine) convicted by oath of one witness, before one justice near, shall forfeit not exceeding 20 l. to be paid immediately to such justice, who may reward the informer thereout not exceeding a third part, and pay the remainder (charges deducted) to the poor of the parish where the conviction shall be;

be; and in default of payment, he may commit him to the house of correction, to be kept to hard labour not exceeding one month. 9 *An. c. 2.*

And by the 26 *G. 2. c. 6.* If the master shall quit, or knowingly permit any person to quit the ship, by going on shore, or on board any other vessel, before the quarantine shall be performed, unless in such cases as shall be permitted by the orders concerning quarantine; or if he shall not, in convenient time after notice, cause the vessel and lading to be conveyed to the place appointed for quarantine, he shall forfeit 500*l.* half to the king, and half to him that shall sue: And if any person shall so quit such ship, all persons by any kind of force may compel him to return; and he shall for such offence be imprisoned six months, and forfeit 200*l.* half to the king, and half to him that shall sue. *f. 5.*

11. And if any person shall go on board, and return from any ship, during the quarantine, without such licence; he may be compelled by the persons appointed as aforesaid, to return and continue on board during such quarantine; and the master of such ship shall there keep and maintain him. 9 *An. c. 2.*

Persons going aboard.

12. When any part of *Great Britain, Ireland, Guernsey, Jersey, Alderney, Sark, or Man, France, Spain, Portugal,* or the low countries shall be infected, the king by proclamation may prohibit all small boats and vessels under the burden of 20 tons, from sailing out of port, till security be first given by the master, to the satisfaction of the principal officer of the customs, or chief magistrate of the port, by bond to the king with sureties, in the penalty of 300*l.* that he shall not go to or touch at any place mentioned in the proclamation; and that the master and every mariner and passenger shall, during the time aforesaid, not go on board any other vessel at sea; and that he shall not permit any person to come on board such boat or vessel at sea; and shall not receive any goods out of any other vessel; for which bond no fee shall be taken. And if such boat or vessel shall sail before such security given, the same, together with the tackle and furniture, shall be forfeited to the king; and the master and every mariner therein, being thereof convicted, on his appearance or default, on oath of one witness, by one justice where the offender shall be found, shall forfeit 20*l.* half to the informer, and half to the poor of the parish where the offender shall be found, by distress; and for want sufficient distress to be committed to prison for three months. 26 *G. 2. c. 6. f. 19.*

In what case small vessels shall not be allowed to sail.

Lazarets to be appointed.

13. Whenever the king, with the advice and consent of parliament, shall direct lazarets to be provided, for receiving of persons obliged to perform quarentine, or for airing of goods, it shall be lawful to erect the same, either in any waste grounds or commons, or where there are not sufficient, in the several grounds of any person whatsoever, not being a house, park, garden, orchard, yard, or planted walk, or avenue to a house, paying for the same as shall be agreed on between the persons interested, and any two persons appointed by the king under his sign manual; and if they cannot agree, then the said two persons shall, 30 days before the sessions give to the occupier a notice in writing, describing the quantity of ground, and purporting that the consideration for the same will be settled by a jury at such sessions. And the justices there, on proof of such notice shall charge the jury which shall attend there (or some other jury to be then and there impanelled and returned by the sheriff without fee) and cause to be sworn, well and truly to assess the value of such grounds, to whom the parties may have their lawful challenges; and the verdict of the said jury, and the judgment of the justices thereupon, shall be conclusive, and finally bind all parties; and thereupon the king shall hold such grounds for such term as he shall judge necessary, paying for the same such rent or other consideration as shall be so assessed. 26 G. 2. c. 6. f. 6.

And the officers authorized to put in execution such orders as aforesaid, shall cause all persons obliged to perform quarentine, and all goods comprized in such orders to repair or be conveyed to some of the said lazarets, or to such other places as shall be provided according to such orders. *id. f. 7.*

And if any person shall refuse or neglect to repair, within convenient time after notice, to the lazaret, or other place appointed, or shall escape or attempt to escape from thence, before quarentine performed; the watchmen, and other persons appointed to see quarentine performed, by force may compel him to repair or return thither: and every person so refusing or neglecting to repair thither, and also every person actually escaping, shall be guilty of felony without benefit of clergy. *id. f. 8.*

Persons entering lazarets, not to return till quarentine performed.

14. And if any person not infected, nor liable to perform quarentine, shall enter any lazaret, or other such place, and shall return or attempt to return, unless as permitted by such orders; the watchmen, or other persons appointed, by force may compel him to return and perform

form quarentine: and if he shall actually escape before he hath performed the same, he shall be guilty of felony without benefit of clergy. *id. f. 10.*

15. And the mayor, head officers, and justices of the peace of every city, borough, town corporate, and places privileged, or any two of them, may assess every inhabitant, and all houses of habitation, lands, tenements, and hereditaments, for the reasonable relief of persons infected with the plague, or inhabiting in infected houses, and levy the same by warrant; and if the party to whom the warrant is directed shall not find any goods to levy the same; then upon return thereof, they shall by warrant cause the person to be arrested, and committed to gaol till he shall pay. *1 f. c. 31. f. 2, 3.*

Assessment for relief of persons infected.

And if the inhabitants of such place shall find themselves unable to relieve all such persons, then on certificate thereof by the said magistrates or two of them, to the justices of the county of or near the said city or other place, or to two of them, they may tax the inhabitants of the county within five miles of the place infected, at such weekly sums as they shall think reasonable, to be levied by their warrant by sale of goods, and in default thereof, by imprisonment as aforesaid. *id. f. 4.*

And if the infection shall be in a town where there are no justices, or in a village or hamlet; then two justices of the county may assess the inhabitants of the county, within five miles of the place infected, at such weekly sums as they shall think fit, for the reasonable relief of places infected; to be levied by their warrant by sale of goods, and in default thereof by imprisonment as aforesaid. *f. 5.*

All which said taxes shall be certified at the next quarter sessions, for such town or county respectively; and there they may order the same to continue, or be enlarged or extended to any other part of the county, or otherwise determined. *f. 6.*

Officer making default in levying the same, shall forfeit 10s. to be employed to the charitable uses aforesaid. *f. 6.* But it is not said how this penalty shall be levied.

16. And the justices, mayors, and other head officers, may appoint within their limits searchers, watchmen, examiners, keepers, and buriers for the places infected; and give them directions, and swear them for the performance thereof. *1 f. c. 31. f. 9.*

Searchers for places infected.

17. If any person shall conceal from the officers of quarentine, or convey any letters or goods from any ship under

Secreting goods under quarentine.

Damaging goods.

quarentine, or from any lazaret; he shall be guilty of felony without benefit of clergy. 26 G. 2. c. 6. §. 18.

Discharge after
quarentine per-
formed.

18. If any officer or other person shall imbezil or damage any goods performing quarentine; he shall pay treble damages, with full costs. 26 G. 2. c. 6. §. 11.

19. After quarentine performed, and on proof thereof by the oaths of the master and two other persons of the ship, or by the oaths of two credible witnesses before the customer, comptroller, or collector of that or the next port, or their deputies, or a justice near, and that the *ves-sel* and every such *person* are free from infection; and after producing a certificate thereof signed by the chief officer who superintended the quarentine; such officer of the customs, or justice, shall give a certificate thereof (*gratis*), and thereupon the vessel and every such person shall be liable to no farther restraint. 26 G. 2. c. 6. §. 13, 14.

And all goods liable to quarentine shall be opened and aired, as by such orders shall be directed; and after such order hath been complied with, and a certificate thereof given by the chief officer appointed to superintend the quarentine and airing of such goods, and proof made thereof by the oaths of two witnesses, before the customer, comptroller, or collector of the next port, or any of their deputies, or any justice living near; on certificate and return of such proof by such custom house officer to the commissioners of the customs, they or two of them by their order shall discharge the same. §. 15.

And if any person shall take any fee for such oath, order, or certificate; he shall forfeit 100l. half to the king, and half to him that shall sue. §. 16.

And if any superintendant of the quarentine, or watchman, shall in such case give a false certificate; he shall be guilty of felony without benefit of clergy. §. 17.

Note; the abovementioned act of the 9 *An.* was repealed by the 7 G. §. 1. c. 3. but was revived by the 8 G. c. 8. which enacts, that neither the said statute of the 7 G. nor any thing therein contained, shall continue in force longer than *Mar.* 25. 1723.

Players.

1. **E**VERY person who shall for hire, gain, or reward, act, or cause to be acted, any play or other entertainment of the stage, or any part therein, if he shall have no legal settlement where he acts, without authority from the

the king or the lord chamberlain, shall be deemed a rogue and vagabond within the 12 *An.* (which act is repealed; but the same is re-enacted by the 17 *G. 2. c. 5.*) 10 *G. 2. c. 28. f. 1.*

Or otherwise he shall forfeit 50*l.* in which case he shall not also suffer as a vagrant. *f. 2.*

2. And if, any play, or part thereof, be acted in any place where wine, ale, beer or other liquors shall be sold, the same shall be deemed to be acted for *gain, hire, and reward.* *f. 7.*

3. And no person shall for hire, gain, or reward, act or cause to be acted any new play, or any part therein, or any new part added to an old play, or any new prologue or epilogue, unless a true copy thereof be sent to the lord chamberlain, 14 days before the acting, together with an account when and where it is intended to be acted, signed by one of the managers. *f. 3.*

And the lord chamberlain may prohibit the same as he thinks fit; and if any person shall act without such copy being sent, or against such prohibition, he shall forfeit 50*l.* and the licence of the playhouse shall be void. *f. 4.*

4. And no person shall be authorized to act, except within the liberties of the city of *Westminster*, and where the king shall reside. *f. 5.*

5. All the said pecuniary penalties may be recovered in the courts at *Westminster*; or before two justices, by the oath of one witness, or confession, to be levied by distress; and for want of sufficient distress, the offender to be committed to the house of correction, not exceeding six months, to be kept to hard labour; or to the common gaol, not exceeding six months; without bail or mainprize: Persons aggrieved by order of the justices may appeal to the next sessions: The said penalties to be distributed, half to the informer, and half to the poor. *f. 6.*

Plate. See *Etresse.*

Pluries capias. See *Process.*

Poison. See *Homicide.*

Polygamy.

BIGAMY is, where a man has two wives successively, Polygamy where he has several wives at the same time. 3 *Inft.* 88. *Stam.* 134.

Polygamy.

By the statute of the 1 J. c. 1. *If any person within his majesty's dominions of England and Wales, being married, shall marry any person, the former husband or wife being alive; such offence shall be felony (but within clergy).*

If the first marriage was beyond sea, and the latter in England, the party may be indicted here, because the latter marriage makes the offence; but if the first marriage was in England, and the latter beyond sea, it seemeth that the offender cannot be indicted here, because the offence was not within the kingdom. *Kely. 79, 80.*

But this act shall not extend to any person, whose husband or wife shall be continually remaining beyond the seas, by the space of seven years together. *id.*

And this, altho' the party in England hath notice, that such husband or wife is living. *1 H. H. 693.*

Nor to any person whose husband or wife shall absent him or her self, the one from the other, by the space of seven years together, in any part of his majesty's dominions, the one of them not knowing the other to be living within that time. *id.*

Nor to any person who shall be, at the time of such marriage, divorced by sentence in the ecclesiastical court. *id.*

And this divorce is to be understood not only a *vinculo matrimonii*, as for precontract, consanguinity, or affinity, which dissolveth the marriage, and therefore needeth not this proviso; but also, and chiefly a *mensa & thoro*, as for adultery, which dissolveth not the marriage, yet in respect of the generality of the words, a person divorced only a *mensa & thoro* is privileged from being a felon in marrying again, although the second marriage is void. *3 Inst. 89. 1 H. H. 694.*

Nor to any person whose former marriage hath been, by sentence in the ecclesiastical court declared to be void, and of none effect. *id.*

Nor to any person, by reason of any former marriage made within age of consent. *id.* That is, either the woman being under 12, or the man under 14. *3 Inst. 89.*

On a prosecution upon this statute, the first and true wife is not to be allowed as a witness against the husband; but it seems clear, that the second wife may be admitted to prove the second marriage, for she is not his wife so much as *de facto*. *1 H. H. 693.*

Pond. See Game.

1800.

POOR.

CONCERNING the binding and ordering of parish and other apprentices, see title *Apprentices*.

Concerning the filiation and maintenance of bastard children, see title *Bastards*.

Concerning the ordering of servants, and other workmen and labourers, see title *Servants*.

For these do fall in with this title, no further than as they happen to become poor: Upon which account, their settlements are here treated of; but nothing otherwise in particular concerning them.

After having premised one general clause in the statute of the 17 G 2. c. 38. f. 4. which seems to affect the whole law relating to this title, to wit, *That if any person shall be aggrieved by any thing done or omitted by the churchwardens and overseers, or by any of his majesty's justices of the peace, he may, giving reasonable notice to the churchwardens or overseers, appeal to the next general or quarter sessions, where the same shall be heard, and finally determined; but if reasonable notice be not given, then they shall adjourn the appeal to the next quarter sessions; and the court may award reasonable costs to either party, as they may do by the 8 & 9 W. in case of appeals concerning settlements; (This being premised) I shall treat of this extensive title in the following order: That is to say,*

- I. Concerning the appointment of overseers, with their duty thereupon.
- II. Of settlements.
- III. Of removals.
- IV. Of the poor rate, and other helps towards their relief.
- V. Of the relief and ordering of the poor.
- VI. Of the overseers account.
- VII. Penalty of overseers for the neglect of their duty.
- VIII. Indemnity of overseers in the performance of their duty.

I. Appointment of overseers, with their duty thereupon.

Appointment of
overseers in pa-
rishes and
townships.

1. Anciently, the maintenance of the poor was chiefly an ecclesiastical concern. A fourth part of the tithes in every parish was set apart for that purpose. The minister, under the bishop, had the principal direction in the disposal thereof, assisted by the churchwardens and other principal inhabitants. Hence naturally became established the parochial settlement. Afterwards, when the tithes of many of the parishes became appropriated to the monasteries, those societies had some share likewise (by reason of the said tithes, and other donations for that purpose) in the relief of the poor. And the rest was made up by voluntary contributions. — By the statute of the 27 H. 8. c. 25. The churchwardens, or two either of every parish, were to make collections for the poor, on Sundays. — By the 5 & 6 Ed. 6. c. 2. The minister and churchwardens were annually to appoint two able persons or more to be gatherers and collectors of alms for the poor. — By the 5 El. c. 3. The parishioners were to chuse the said collectors and gatherers for the poor. — By the 14 El. c. 5. The justices were to appoint collectors for the poor within every parish; and were also to appoint the overseer of the poor, whose office was nearly the same as it is at present, except only for collecting the money, which was done by the aforesaid gatherers or collectors. — By the 18 El. c. 3. The justices were to appoint collectors and governors of the poor. — By the 39 El. c. 3. The churchwardens of every parish, and four substantial householders there, being subsidy men, or for want of subsidy men, four other substantial householders, to be nominated yearly in easter week by two justices (1 Q.) were to be called overseers of the poor of the same parish. — And so it continues with some small variation, by the statute of the 43 El. c. 2. as followeth :

The churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meet, having respect to the greatness of the parish, to be nominated yearly in Easter week, or within one month after Easter, under the hand and seal of two or more justices of the peace in the same county, whereof one to be of the quorum, dwelling in or near the parish or division, shall be called overseers of the poor of the same parish. 43 El. c. 2. f. 1.

And by the 13 & 14 C. 2. c. 12. *Whereas the inhabitants of Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland, the bishoprick of Durham, Cumberland, and Westmorland, and many other counties in England and Wales, by reason of the largeness of the parishes, cannot reap the benefit of the said act of the 43 El. it is enacted, that all and every the poor, needy, impotent, and lame persons, within every township or village within the several counties aforesaid, shall be maintained, provided for, and set on work, within the several and respective township and village, wherein he shall inhabit, or wherein he was last lawfully settled; and there shall be yearly chosen and appointed two or more overseers, within every of the said townships or villages respectively.* s. 21.

And by the 17 G. 2. c. 38. *In every township or place where there are no churchwardens, the overseers alone may act in all respects, as churchwardens and overseers may do in other places, by virtue of this or any former act.* s. 15.

And if any overseer shall die, or remove, or become insolvent, before the expiration of his office, two justices (on oath thereof made) may appoint another in his stead. s. 3.

And if in any place there shall be no such nomination of overseers as is before appointed, every justice of the division shall forfeit 5 l. to the poor of such place, to be levied by the churchwardens and overseers, or one of them, by distress, by warrant from the sessions. 43 El. c. 2. s. 10.

The churchwardens] These (as is above observed) were overseers of the poor long before this statute of the 43 El. And hereby they need no formal appointment to the office of overseer, but the statute declares them to be such, and requires others to be added to them by the nomination of the justices.

Of every parish] In the case of the *King against Seven and Arnold*, T. 29 & 30 G. 2. two justices appointed *Seven and Arnold*, substantial householders in the precinct of the Tower within, otherwise called the parish of *St. Peter ad vincula*, to be overseers of the poor of the said precinct. It was objected, that this appointment is not warranted by the statute, which requires that the churchwardens of every parish, and four, three, or two substantial householders there, shall be appointed overseers of the poor of the same parish. Mr. Justice *Denison* delivered the resolution of the court (*Ryder Ch. J.* being dead, but concurring with the other justices before his death): This is not a good appointment under the 43 El. c. 2. which requires them to be appointed within a parish; neither is it good within the statute of 13 & 14 C. 2. c. 12. which

which says, that there shall be yearly appointed two or more overseers within every *township* and *village* respectively. *Precinct* is a word of ambiguous signification; it is not a boundary of any parish or vill; it may be more than a parish, or may be less. If it was a parish or vill by reputation, it might have been good (*Cro. Car.* 92. 394.); but the court cannot intend this precinct to be a vill, and the words of the statute ought to be pursued. Neither will the words otherwise called the parish of *St. Peter ad vincula*, aid the want of this in the appointment: for in all constructions of *alias dict'*, the words that go before the *alias dict'* must be presumed to be true; as in an indictment, the addition of the party not coming till after the *alias dict'* will vitiate the indictment, for what precedes the *alias dict'* is the true and proper appellation. If in this case the *alias dict'* had come after the parish of *St. Peter*, it would have done. And the appointment was quashed.

Parish] *E. 8 G. King* and the inhabitants of *Rufford*. A *mandamus* was directed to the justices of the peace of the county of *Nottingham*, reciting that within the vill of *Rufford*, in the forest of *Sherwood*, there are divers substantial freeholders, able to contribute to the maintenance of the poor, and that there are no churchwardens or overseers to make a rate, and that there are poor unprovided for; therefore it commands them to appoint overseers. They return that the vill of *Rufford* is part of no parish, but time out of mind has been extraparochial, without church, chapel, or parochial rites, and that there never have been any overseers of the poor; and for that cause they cannot appoint. And there having been only an extrajudicial opinion of the court, in the case of *Dolting* and *Stokeland*, *H. 11 Ann.* that overseers of the poor might be appointed in an extraparochial place; the court directed an argument, that the point might be solemnly determined. And after argument and consideration of all the statutes relating to the poor, the court were of opinion, that the powers given by the 43 *El.* to be executed in parishes, were by the 13 & 14 *C.* 2. extended to all townships and villages, whether parochial or extraparochial; that although most of the forests in *England* are extraparochial, yet notwithstanding they ought to maintain their own poor; and consequently overseers might be appointed: for which purpose in this case a peremptory *mandamus* was awarded. *Str.* 512.

For the statute directeth overseers to be appointed within the several townships and villages within the several
countries

counties (without saying, within the several *parishes* in the said counties); so that if it is a township or village, and such township or village is within the county, it seemeth not to be material whether it is within any *parish* or not.

But a township or village it must be. As in the case of *K.* and the inhabitants of *Welbeck* in the county of *Nottingham*, *M.* 14 G. 2. A *mandamus* was granted, suggesting that there are several householders and farmers inhabiting and residing within the village of *Welbeck*, able to provide for the poor; and therefore commands the justices to appoint overseers of the poor. To this it is returned, that *Welbeck* is extraparochial, and is not, nor ever was reputed to be a village or township, and therefore they cannot appoint any persons to be overseers. And upon argument this was held to be a good return. For though it doth not answer the supposal of the writ, as to there being several substantial householders and farmers; yet it answers the point in the 13 & 14 C. 2. c. 12. by saying it is no township or village, or reputed as such; and it is to such places only that we can send a writ. *Str.* 1143.

And the like had been adjudged before, in the case of *Denham* and *Dalham*, *H.* 8 G. 2. And of *Stoke Prior* and *Grafton*, *E.* 10 G. 2. In which case of *Denham* and *Dalham*, it was adjudged, that *Southwold* an extraparochial place in the county of *Suffex*, consisting of two houses and 300 acres of land, was not a place liable to maintain its own poor, because it had not the reputation of a vill, and two houses were not sufficient to make it such; but that there ought to be several houses and neighbours, and they should have a petty constable. *Str.* 1004, 1071.

For a *township* in strictness seemeth to be nothing else but the constablewick or decennary which anciently consisted of ten men with their families, of which the chief or head was the constable, otherwise called the tythingman, or headborough; although now for the most part, by reason of the increase of people, and the improvements of tillage, the decennary comprehendeth many more families than ten.

Four, three, or two] In the case of *K.* and *Harman*, *M.* 13 G. 2. An appointment of five overseers was thought to exceed the direction of the statute; but inasmuch as the 13 & 14 C. 2. impowers the justices to appoint two or more (indefinitely) in townships or villages, and it hath been the custom in large parishes to appoint more than

than four, the court would not quash the appointment. *Saff. C. V. 2. 148.*

But in the case of the *King* against *Loxdale* and others, *H. 30 G. 2.* on a rule to shew cause why an appointment of five overseers for the parish of St Chad in Shrewsbury should not be quashed, it being objected that this appointment was not warranted by the statute of the 43 *Eliz.*—By lord Mansfield chief justice: Upon reading the case of the *King* and *Harman*, I find it was pressed in that case, that the usage had been for more than four overseers to be appointed; and Sir John Strange was instructed to argue it upon that head, on this maxim, that *communis error facit jus*. In the printed case of the *King* and *Harman*, it is said, the court refused to quash the order. But this is a mistake. Being desirous to know the usage in a variety of parishes, we desired the agents to inquire what had been the usage in the large parishes in London and Westminster, and more particularly with respect to the different parishes in Shrewsbury. The result is, in Shrewsbury it appears there are four parishes, in which the number of overseers has never exceeded four; but the parish of St Chad, in which the present dispute arises, has five for one year only: In the parish of St Andrew's, Holborn, there are eight overseers; but then there are three divisions there, and overseers for each; and orders of removal are made from one division to another: In St Giles's, eight overseers; but in 1756, only four were appointed by the justices, and four more serve voluntarily as assistants: In other parishes, no more than four. This account that has been given us is very satisfactory; for it lays the usage out of the case, and proves it to have been the contrary way. This brings me to consider what are the authorities and judicial precedents in this case. And this seems to be quite a new and original case, on which there has never been any judicial opinion given. There never was any doubt till the case of the *King* and *Harman*; and there the court gave no determination on the validity of the appointment, as appears by the rule “and the court “will further consider of the order”. The case of the *King* and *Besland*, *H. 19 G. 2.* was very different from this: there it was impossible to have more than one overseer. But there was no judicial opinion in that case, so that neither of these two cases hath any determination extending to the present case. This case therefore being an original one, it must be determined on the true construction of the statute of the 43 *Eliz.* which may be called,

The

The great constitution of the system of law concerning the poor. To incline the court to construe this act with a latitude, two other clauses have been mentioned, that have been held merely directory: One is, with respect to the time of appointing; now the precise time is not of the essence of the thing, where third persons, and innocent ones, are affected. As in the case of the town of *Launceston*, 1 *Roll's Abr.* 513. An appointment after the time was held to be good, rather than defeat the intent of the charter, and leave the corporation destitute of a magistrate by another construction. So in the case of the *King against Sparrow* and others (*Str.* 1123.) where the overseers were appointed more than a month after Easter; and to have said in that case, that there could not have been an appointment after the time, would be to say, that there is no remedy for the neglect of the justices to appoint within the time. The other clause is, to be nominated by the justices *in or near*. This is a loose indefinite expression. If a justice lives 20 miles off, if there is none nearer, he must be said to be near. It is a word of relation. I do not see how this clause could be construed otherwise. And tho' some part of the act should be construed to be directory, yet it cannot from thence be inferred that the whole is so. It is a rule of construction, that where persons, as justices, commissioners, or the like, have a special authority by statute, they have no power but under that statute; and if the thing is done otherwise, and not agreeable to the special authority, it is void. There is no room for the distinction, that there must be negative words to circumscribe the power. It was said at the bar, that if a man has a power originally, and an act of parliament gives him something less than he had before; there, without negative words, the act will not take away that which he had before. But it can never be necessary for the act to say a man shall not do what he could not do before. The meaning of the legislature was not to leave the justices an absolute discretion, but to confine their discretion not to exceed four, nor to appoint less than two. There is another rule of construction: Where there are at different times different statutes made concerning the same matter, tho' some of them should be expired, and not referred to by the subsequent statutes; yet being *in pari materia* they shall all be taken together and considered as one system of that branch of positive law, and giving light to one another. This has been so determined of the disabling statutes concerning leases by ecclesiastical

ecclesiastical persons. So the statutes relating to bankrupts, some of which are temporary, are *in pari materia*, and shall be taken together. Thus all the statutes since the reformation concerning the poor, I consider as a new body of positive law, and they must be taken together. By the 39 *Eliz. c. 3.* four overseers were to be appointed, and there was no latitude at all. If the question had stood upon that statute, the justices could not appoint a greater number. There is a late instance: By the British museum act, 26 *G. 2. c. 22.* the trustees, or the major part of them, were to do certain acts. It was found impossible to get the major part of them together, and they were forced to apply for a new act, 27 *G. 2. c. 16.* giving power to the major part of the trustees then present, not less than seven, to do those acts. It is plain to me, that in making the 43 *Eliz.* the legislature had the 39 *Eliz.* under their contemplation. They refer to it; and the 43 *Eliz.* was not to commence till the Easter following. The 39 *Eliz.* expired with the session in December; they therefore continued the 39 *Eliz.* till the Easter following. This clearly accounts for the expression four, three, or two; rather than two, three, or four; (for there is a great difference between these two expressions;) and points out to a demonstration what the legislature meant. Parishes were not so populous then; and four were thought too many: and therefore the 43 *Eliz.* gives a latitude to appoint fewer, and directs the justices to be governed by the greatness or smallness of the parish. It has been contended, that the 13 & 14 *C. 2.* is a legislative exposition of the 43 *Eliz.* I do not see that that statute will vary the question one way or the other. That statute is to make each township in the nature of a separate parish; and says, that two or more overseers shall be chosen in each township. I listened for a case to shew that in these townships they could appoint five. Upon enquiry, it does not appear that more than two have been appointed. The statute of *C. 2.* refers you, as to the appointment, to the statute of the 43 *Eliz.* by express words, and this reference is the same as repeating the statute. It was observed that there has been a great latitude in the construction of *C. 2.* that is, that it hath been extended to counties not therein named. But it would have been absurd to say, that that statute reciting an inconvenience in Wales, should extend to some other place only. The statute made in the year 1740, for the parish of St Martin's in the fields has great weight with me. This proceeded

from a conviction in those that applied for the act; that they could not appoint more than four. It shews that the parliament thought it was a real doubt, and that they thought it necessary there should be a boundary; for they have not left it at large, but confined the parish not to exceed nine overseers. There are two acts which passed after the case of the *King* and *Harman* and the act for St Martin's parish, in the 17 G. 2. to remedy some inconveniences relating to the overseers, with regard to rates and other matters; and yet they make no alteration in the number of overseers. In the parish of St Clement's Danes, they have restrained themselves to four ever since. And the precise number is not immaterial, as was said at the bar, either to the parties themselves, for it is a burthensome office, and the more there are at the same time, the quicker will the rotation be; or to the parishes for whom they are trustees, for a trust is not the better discharged by a greater number than by a few. There may be more expence in a larger number. They may be obliged to divide themselves into separate quorums; which is no immaterial consideration to the persons with whom they are to act. If five may be allowed, there will be no boundary, and then there will be great inconveniences. Upon the whole, the words are precise; and the usage, which alone occasioned my doubt, turns out the other way. This appointment is not warranted by the 43 Eliz.—Mr justice Dennison was of the same opinion. He said, if this had been a matter of doubt, it is strange that it should never have come before the court before the case of the *King* and *Harman*, in the 13 G. 2. In that case they did not quash the appointment, for the sake of the poor of that particular parish. This is an original creation of a jurisdiction for the maintenance of the poor. The number of overseers is the essential part of the constitution. Where a jurisdiction is created by statute, you cannot vary from it. This office is partly ministerial and partly judicial. The statute of 13 & 14 C. 2. is tied up according to the rules of the 43 Eliz. and one of the rules is the restraint. As it has rested so long, I am of opinion an appointment of five overseers cannot be warranted.—By Mr justice Foster: I never had a doubt. The court has gone hitherto upon the prudential reason of not overturning the rates of so many parishes. In queen Elizabeth's time there were no large and populous parishes in great towns and cities. There were indeed parishes of large extent in the country; but they are provided for by

the 13 & 14 C. 2. If any inconvenience arises from having too few officers in particular parishes, you must apply to parliament. It would produce confusion to have more officers. The 43 *Eliz.* is the first statute now in force, but not the first which provided for the poor. It does little more than make the 39 *Eliz.* perpetual. And there were several statutes before that.—By Mr justice Wilmot: The circumstance that made me doubt was, the notion of an usage to have more than four overseers in large parishes. The words of the act are so strong, that had the usage been otherwise, I should have doubted whether that could have controuled them; but the usage being to appoint but four, it furnishes a strong argument. And the act for St Martin's is a strong instance of the sense of the legislature. The parliament finding two parochial officers, to wit, the churchwardens, added others for the parochial administration. The 43 *Eliz.* relaxes the 39 *Eliz.* and gives a discretion within the number four. In the 18th clause, with respect to the island of Fowlness in Essex, a power is given to the justices, to appoint such a number of overseers as the exigencies of the place shall require; which shews, that where the legislature meant an indefinite number, they have expressed it. In general, it would be inconvenient to have an indefinite number; it would not lessen the burden; nor would the parish have a greater security, for each man is answerable only for the money he receives, and accountable for his own acts only.

Substantial householders there] M. 20 G. 2. Case of the overseers of *Weobly* in *Herefordshire*. There were two sets of overseers appointed, and both quashed; one, because the persons appointed were described only as *principal inhabitants*, instead of pursuing the words of the statute, which are, *substantial householders*: and the other, because it only called them substantial householders, without adding *there*, or *in the parish*; and this too was not in the body of the appointment (as it ought to be) but only in the direction at the foot of it. *Str.* 1261.

And abundance of other orders have by the court of king's bench been quashed from time to time, for not setting forth that the persons appointed were substantial householders.

And it seems not to be sufficient that the party appointed is an inhabitant for part of the year only, but he ought to be generally resident there; and therefore the court of king's bench seemed to discountenance a parish in choosing a citizen of *London*, who only resided with them in the summer,

mer, to be overseer; but the order being bad in other respects, no judgment was given upon this point. *Carth.* 161. *K. and Moor.*

It seemeth that a woman (though a substantial household-er) ought not to be appointed overseer; but the point was not directly determined. The case was this: A *mandamus* was moved for to the justices to nominate two substantial householders to be overseers of the poor of the parish of *Chardstock* in the county of *Dorset*; and there was an affidavit, that at a meeting of the parish after *Easter* last, a man and a woman were elected overseers, and at a meeting of the justices they approved of the man, and refused the woman, as being an unfit person to serve as overseer; and the old overseers refusing to nominate any other, the justices approved of the man only. By *Powel J.* A woman is not to be an overseer of the poor, and there can be no custom in a parish to put her in, because of her being an householder. And *Parker Ch. J.* directed, that the parish should apply to the justices to have another nominated, and if they refused, then to apply to the court for a *mandamus* the next term. *E. 10 An. Vin. Tit. Poor. A.*

Whether a justice of the peace may be appointed overseer, seemeth not to have been determined. By the tenor of the following report, it seemeth to be in a great measure discretionary in the justices appointing, and in the sessions upon an appeal, to determine whether he is a fit person or not. *H. 30 G. 2. Rex v. James Gayer, esquire.* Two justices appointed Mr. *Gayer* to be overseer of the poor of the parish of *Rockbear* in the county of *Devon*. The sessions, upon appeal, vacate the appointment; setting forth, that it appearing to them that he was then an acting justice of the peace for the said county, and also a lieutenant of marines in his majesty's service on half pay, and that there are other sufficient substantial householders within the said parish for the doing such office, they therefore vacate and make void the appointment of the said *James Gayer*.—On a rule to shew cause, the counsel on both sides went into a long argument, whether the reasons given were sufficient; particularly, whether the offices of justice of the peace, and of overseer of the poor were compatible, and whether the objection could be removed by appointing a deputy overseer; if it could, then, whether a justice of the peace was liable to be appointed overseer, in order to his executing the office by deputy.—By lord *Mansfield Ch. J.* The general questions concerning the incompatibility of offices,

and the power of appointing deputies, are of a very large compass indeed; but the present question seems to me to turn in a very narrow space. The sessions, upon an appeal, have a right to exercise the same latitude of discretion, in judging who are fit to be nominated overseers, as the two justices had. They have given their opinion, that Mr. *Gayer* was not a proper person to be appointed overseer. They are not obliged to give any reason for their opinion; because the legislature has intrusted them, upon an appeal, with the power or authority of appointing overseers. If they had given no reason, their order had undoubtedly been good. We must have presumed that they acted upon proper grounds. It is true, that where the whole reason is set out, and is clearly wrong; we may, and ought to quash an order manifestly made by mistake, upon an erroneous foundation. But then the bad reason given, must appear to have been their only inducement. If there may have been other grounds, they should be presumed sufficient; and the order ought not to be set aside, because some of their reasons, unnecessarily given, appear to be bad. There was no necessity for appointing Mr. *Gayer*. The sessions state, that there were other sufficient substantial householders within the parish. They might think Mr. *Gayer*, under all the circumstances, improper unnecessarily to be appointed. His being an acting justice of the peace, and a lieutenant of marines, might be two circumstances which weighed among others. But it doth not follow, neither is it said, that they looked upon both or either of these reasons, as an exemption from being appointed, or a disability to serve the office of overseer; and that they vacated the warrant of two justices as illegal upon that account. The execution of a discretionary power, where it is not necessary to give a reason, ought to be supported, unless the whole reason is set out, and manifestly wrong. Here, the whole reason, upon which the sessions acted, is not given. They say there were other persons qualified. Supposing Mr. *Gayer* liable to serve the office, they might think him not so proper as many others. And therefore we are not obliged to say, that the whole reason they went upon is bad; allowing (for argument) that there arose no legal objection to the appointment of Mr. *Gayer*: Which, I think, there is no occasion now to examine.— Mr. Justice *Denison* concurred, and said, They were not obliged to give any reason at all; and if it be only an imperfect one, we ought not to quash their orders. We

will intend every thing, in favour of the justices, in their orders. Now here, the reason doth not appear to be a wrong reason: It is enough, that they judged him an improper person to be overseer.——And by the court unanimously, the order of sessions was confirmed, and the order of the two justices quashed. *Burrow. 245.*

By the 2 G. 3. c. 20. No person serving for himself as a private man in the *militia*, shall during the time of such service be liable to serve as overseer of the poor. [But the act provides no exemption for the officers.]

By the 18 G. 2. c. 15. Freemen of the corporation of *surgeons* in *London*, are exempted from the office of overseer of the poor.

To be nominated yearly in Easter week] *E. 13 G. K. and Clerkenwell.* The court seemed to think an appointment of overseers on a *sunday*, to be a good appointment; for it may be in *Easter week*, and this is the first day of the week. *Foley 4.*

Or within one month after Easter] *H. 13 G. 2. K. and Sparrow.* Upon a rule to shew cause, why the appointment of overseers for the town of *Ipswich* should not be quashed, the objection was, that the justices, upon a *mandamus* directed to them, had appointed overseers, but that it was not within the month after *Easter*, but afterwards, and that consequently the appointment was void. But by *Lee Ch. J.* who delivered the opinion of the court; As the justices are punishable by the act for not doing their duty, it would be a very hard construction to make the act itself void, for it would subject the parish to very great inconveniences, for a thing which is not in their power to prevent. To interpret an act of parliament, we must consider the mischief to be remedied, the remedy provided, and the true reason of that remedy. In this case, the defect is, the want of a proper officer to take care of the poor. The remedy is, that the justices shall appoint overseers, and that within such a time. Now the justices have neglected their duty, in not appointing overseers within the proper time, and by the act have forfeited 5*l.* but that doth not make such appointment void. Were the express direction of the act, that they should appoint in that and no other time, it would be otherwise; but here the statute is only directory, and a penalty inflicted on the justices for not following such directions. *Seff. G. V. 2. 140. Str. 1123.*

Under the hand and seal of two or more justices] *M. 13 G. Chilmerton and Flagg.* The sessions appointed overseers: but the order was quashed by the court of king's bench, because the sessions have no original jurisdiction in that case by the statute. *Seff. C. V. 1. 260. Foley 7.*

And the reason is, because the statute gives a power of appealing to the sessions against the order of appointment; which power by this means would be taken away.

In or near the parish or division] *M. 13 G. 2. K. and Sparrow.* An appointment of overseers, not mentioning the justices to be of the division, was held to be good enough; for that the words in this case are only directory. *Seff. C. V. 2. 140.*

In some of the antient statutes, not now in force, as particularly the 22 *H. 8. c. 12.* the justices were required to *divide* themselves, for the better execution of the regulations concerning the poor. And thence came the clause in the subsequent statutes, that the justices *of the division* were to do such and such things. But as there is no law at present which requires them to *divide* for the aforesaid purposes, there is properly no *division* in the sense which the statutes intended; and consequently it cannot be necessary to set forth now, that the justices are *in or near the division*.

And many other counties in England and Wales] *T. 27 C. 2.* in the case of *Skillington and Norton*, it was held, that altho' other counties in general are here mentioned in the recital; yet the statute doth not extend to any other counties but those expressly named, none others being specified in the enacting part. *2 Lev. 142.*

But afterwards, in the case of *Dolting and Stokeland*, *H. 11 An.* It was held by the whole court, that by reason of the words [*and many other counties in England and Wales*] the act is general, and extends to other counties than those named in the act, otherwise it would not extend to one county in *Wales*. *Foley 98.*

And in the case of *Clifton and Churcham*, *H. 12 G. 2.* It was adjudged, that the act extendeth to all counties, being equally beneficial to all; and that the counties there specified are mentioned only as instances. And *Lee Ch. J.* said that so it was determined, upon great debate and consideration, in the aforesaid case of *Dolting and Stokeland*; which case hath been ever since adhered to. *And. 314.*

Within

Within the severall and respective township and village] But it is said, that this shall refer only to the divisions of parishes then made in pursuance of the said statute of the 13 & 14 C. 2. and not to give power to divide in all times to come: As in the case of the King and the Justices of Middlesex, some few years ago; a mandamus was moved for to the justices, to appoint separate overseers for the different divisions in one of the parishes there, in which the overseers had before acted jointly. And it was determined by the court, that this could not now be done.

If in any place there shall be no such nomination as is before appointed] That is, in easter week, or within one month after easter. For the clause doth not suppose, that no overseers at all are appointed within such place, but only not within such time; for the penalty is required to be levied by the churchwardens and overseers, or one of them.

Every justice of the division shall forfeit 5l.] This proceeds upon the supposition of the justices being obliged to divide; for in that case the appointment was to be by the justices in or near the division, and not otherwise: but now the justices at large are all equally concerned; and therefore it seemeth, that this penalty cannot now be levied on any particular justices. But if in any place no overseer shall be appointed, a mandamus will go to the justices at large, to compel them to appoint.

2. And that the justices may know, what persons are fit to be appointed overseers, it is usual and requisite for them to issue their precepts in some such form as here followeth; viz.

Westmorland. } To John Bracken, gentleman, high constable of Kendal Ward, within the said county.

WE two of his majesty's justices of the peace for the said county, one whereof is of the quorum, do hereby require you forthwith upon your receipt hereof, to issue your warrants to all the petty constables within your said ward, in the form or to the effect, according as upon this our warrant is indorsed: Given under our hands and seals the — day of —

The form of the said high constable's warrant to the petty constables.

Westmorland, { To the constable of ———
Kendal Ward, }

BY virtue of a precept from two of his majesty's justices of the peace in and for the said county (one whereof is of the quorum) to me directed, you are hereby required immediately upon sight hereof, to give notice to all and every the overseers of the poor within your constablewick, that they make out a list in writing of a competent number of substantial householders within their respective districts, and deliver in the same to the said justices and others his said majesty's justices of the peace for the said county, at ——— in ——— in the said county, on ——— the ——— day of ——— at the hour of ——— in the forenoon of the same day; to the end that out of the said list the said justices may appoint other overseers of the poor for the year then next ensuing. And be you then there, to certify what you shall have done in the premises. Herein fail you not. Given under my hand the ——— day of ——— in the year of our lord ———.

John Bracken, high constable.

Form of an appointment of overseers.

3. And the form of an appointment of overseers, clear of the objections abovementioned, may be this:

Westmorland. **W**E two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, do hereby nominate and appoint A. O. and B. O. being substantial householders of the parish [or, township] of ——— in the said county, to be overseers of the poor of the said parish [or, township] according to the direction of the statute in that case made and provided. Given under our hands and seals (within a month after Easter.)

But by a remedial clause, in the act of the 17 G. 2. c. 38. it is enacted, that the distress of the poor rate shall not be deemed unlawful, for any defect or want of form, in the warrant for the appointment of overseers. s. 8.

Appeal against the order of appointment.

4. If any person shall find himself aggrieved, by any act done by the said justices; he may appeal to the general quarter sessions, whose order therein shall bind all parties. 43 El. c. 2. s. 6.

To

To the general quarter sessions] This clause leaves the appeal at large, and doth not restrain it to the *next* sessions: But the above mentioned act of the 17 G. 2. directs the appeal to be to the *next* sessions, but yet not in negative words, so as to say, that it shall be at the next sessions, and not otherwise. So that both may seem to stand well together; and then the sense of the statute of the 17 G. 2. will be this, That the appeal against any thing done or omitted by the overseers or justices, in cases wherein no appeal is given by former statutes, must be to the next sessions only, because the clause which gives the appeal, limits it to such next sessions; but in cases wherein an appeal is given by former statutes, such appeal may be to the next sessions according to this clause, or may be according to the directions of such former statutes. And in truth many acts of the churchwardens and overseers may be so contrived, that they cannot be known before the next sessions, and it would give them a great opportunity of fraud, if they might be safe by concealing such practices, until the time of appealing to the next sessions should be expired. But then, in the case before us, there is no power to award costs, unless the appeal be to the next sessions by the 17 G. 2.

5. *M. 14 G. 2. K. and Jones*, A person was indicted for not taking upon him the office of overseer; and by the court it was held to be an offence indictable; for that although the statute appoints a penalty, yet that penalty is not for refusing to take the office, but for neglect of duty in that office; and where a statute commands a thing, and appoints no penalty for disobedience, such offence is indictable as a contempt of the law. *Cress. C. V. 2. 187. Str. 1146.* Overseer refusing to take the office.

6. The overseers thus appointed, and taking upon them the office, shall within 14 days receive the books of assessments and of accounts, from their predecessors, and what money and materials shall be in their hands, and reimburse them their arrears. 17 G. 2. c. 38. s. 1, 11, 13. Overseers general duty.

And they shall take order from time to time, with the consent of two such justices as aforesaid, for setting to work the children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain them; and also for setting to work all such persons, married or unmarried, having no means to maintain them, and using no ordinary and daily trade. Which said churchwardens and overseers, or such of them as shall not be let by sickness or other just excuse, to be allowed by two such justices,

justices, shall meet at least once a month, in the church, on Sunday in the afternoon, after divine service, there to consider of some good course to be taken, and order to be set down in the premisses; Upon pain that every one of them absenting themselves without lawful cause, from such monthly meeting, or being negligent in their office, shall forfeit for every default 20 s. to the poor; to be levied by some or one of the churchwardens and overseers, by warrant from two such justices, by distress; or in defect thereof, any two such justices may commit the offender to the common gaol, there to remain without bail or mainprize, till the said forfeiture shall be paid. Provided, that if any person shall be aggrieved by any act done by the said churchwardens and other persons, he may appeal to the general quarter sessions, whose order therein shall bind all parties. 43 El. c. 2. s. 2, 6, 11.

In the church] But the penalty for not meeting in the church shall not be inflicted on the overseers of extraparochial places; because they have no church to meet in. 8 Mod. E. 7 G.

II. Of settlements.

By a statute made in the 12 R. 2. (c. 7.) The poor were to repair, in order to be maintained, to the places where they were *born*.—By the 11 H. 7. c. 2. they were to repair to the place where they *last dwelled*, or were *best known*, or were *born*.—By the 19 H. 7. c. 12. to where they were *born*, or *made last their abode by the space of three years*.—By the 1 Ed. 6. c. 3. this was explained to be, where they had been *most conversant* by the space of three years.—By the 1 J. c. 7. they were to be sent to the place of their *dwelling*, if they had any; if not, to the place where they last dwelt by the space of *one year*; if that could not be known, then to the place of their *birth*.—So that there were two kinds of settlement all along; by birth; and by inhabitancy, first for any indeterminate time, next for three years, then for one year. And this last continued to the time of the statute of the 13 & 14 C. 2. c. 12. which reduced the residence from the term of one year, to the space of forty days. Which statute of the 13 & 14 C. 2. will often occur in the following sections, being the foundation of all the settlements as they stand at this day; upon which single act there have been more cases adjudged, than upon any other fifty acts in the statute book.

But

But that I may treat distinctly, and as clearly as may be, concerning this subject of settlements, (after having first premised one general rule which controlls almost all the cases of settlements, viz. That no settlement can be legal, which is brought about by practice or compulsion; Read. Tit. Poor) I shall proceed in the following method:

- i. Of persons having no settlement.
- ii. Of certificates.
- iii. Of settlement by birth, viz. of bastards, and others.
- iv. Of the settlement of children with their parents.
- v. Of settlement by apprenticeship.
- vi. Of settlement by service.
- vii. Of settlement by marriage.
- viii. Of settlement by continuing forty days after notice.
- ix. Of settlement by paying parish rates.
- x. Of settlement by serving a parish office.
- xi. Of settlement by renting ten pounds a year.
- xii. Of settlement by a person's own estate.

1. Of persons having no settlement.

Whereas the number of poor within England and Wales, is very great and burthensome; and whereas, by reason of some defects in the law, poor people are not restrained from going from one parish to another,——it is enacted, that within forty days after any such persons shall come to settle in any tenement under 10l. a year, two justices (1 Q.) may remove them to the place where they were last legally settled. 13 & 14 C. 2. c. 12. s. 1.

Poor within England and Wales] By these words of restriction, and the word [such] afterwards, which seems to have reference to those kinds of poor only, and by the direction of removing them to the place where they were last legally settled, which can only mean where they were last legally settled within the then kingdom; it may seem, that other poor, not belonging to England or Wales, are not within the regulations of this statute.

And in Conrad's case, T. 6 W. it was adjudged and declared as follows: A woman and her two children landed

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at *Harwich* from *Holland*, and removing to another place, were sent back by order of two justices: But by the court, The landing makes no settlement; and the order was quashed. And *Eyre J.* (*Holt Ch. J.* being absent) seemed to be of opinion, that this is a case omitted out of the statute. *Comb.* 287.

And if there is a defect in the law with respect to the subjects of a foreign realm, the case of a *Scotchman* or *Irishman* in *England* seemeth to be not much different, except only when they shall become vagrants, for in such case they may be sent into *Scotland* or *Ireland*: But otherwise, if they be able to maintain themselves, and commit no act of vagrancy, it doth not appear that they can be removed by order of two justices, as persons likely to become chargeable. By which means they seem to be in a better condition in *England*, than the *English* subjects: for that, not being removeable, until they be forced to ask relief, and so thereby become vagrants, as wandering abroad and begging; they may continue undisturbed, without the intanglements of a certificate, and consequently are in a better capacity of gaining settlements, if not for themselves, yet for their children born here, and for their servants and apprentices.

Within forty days] The statute of the 17. 2. requires that such 40 days continuance shall not make a settlement, but from the time of delivering notice in writing; and by the 3 *W.* it must be from the time of the publication of such notice in the church: But it hath always been understood, that a person not removeable need not to give such notice; and that a person continuing 40 days *unremoveable*, and a person *not removed* for 40 days after such notice given and published, shall equally gain a settlement. Now the following case happened, *E. 2 G.* between the parishes of *St. Giles* and *St. Margaret*: An *Englishwoman* was married to a foreigner, who had no settlement in *England*; the husband continued for the space of 40 days in a parish *unremoveable*, for that there was no place to which he could be removed; and it was urged, that the wife continuing with him, as part of his family, for 40 days *unremoveable*, she did thereby gain a settlement: But by *Holt Ch. J.* Where a person stays 40 days in a place, whence he hath a right not to be removed, that gains a settlement; otherwise, where he only stays in a place, because they do not know where to remove him. And in this case, he said, that he did not know that a foreigner had a right to

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be maintained in any place to which he came, but that they might let him starve. *Seff. C. V. 1. 97.*

But there is another thing to be considered. It appears, in that case, that there was a *terminus a quo*, but not a *terminus ad quem*; or in other words, that the man's situation in the parish was not such as the law calls unremoveable, as if he had rented a tenement of 10l. a year; but that in fact he was removeable, if they had known whither to have sent him. But put the case, that he had rented a tenement of 10l. a year; or, which is the same thing, that a *Scotchman* or *Irishman* had rented a tenement of 10l. a year: The question is, Whether by continuing thereupon 40 days unremoveable, he would thereby have gained a settlement in pursuance of this statute? If it is answered in the affirmative, then this will follow; that if he comes to reside upon a tenement under 10l. a year, and gives notice in writing, and causes the same to be published as the law requires, and continues 40 days after such publication *unremoved*, he must by the same statute gain a settlement. And if so, a *Scotchman* or *Irishman* may settle himself and his family in 40 days time, in any parish whatsoever, where he can procure any little cottage to live in, by giving and causing to be published such notice as aforesaid. On the other hand, if we have recourse to the observation above mentioned, and say, that this statute extends only to the poor of *England* and *Wales*, then this will follow; that a *Scotchman* or *Irishman* can gain no settlement in *England* by virtue of this statute, and if not by this, then not by any other of the subsequent statutes concerning settlements, for that they are all relative thereunto, and depending thereupon; that is to say, in these circumstances a *Scotchman* or *Irishman* can gain no settlement in *England*, neither by renting 10l. a year, nor by continuing 40 days after notice, nor by apprenticeship, nor by service, nor by paying parish rates, nor by serving a parish office. The practice seems to be universally allowed in favour of the former opinion.

ii. Of certificates.

Before we come to treat especially of settlements, it will be necessary to speak somewhat of certificates, as affecting settlements several ways.

By the 13 & 14 C. 2. c. 12. Power is given upon complaint of the churchwardens or overseers, within 40 days after a person is come to settle on any tenement under 10l.

a year, unto two justices (1 Q.) to remove such person to the place where he was last legally settled, *unless he give sufficient security for discharge of the parish, to be allowed by the said justices.* s. 1.

And by the 8 & 9 W. c. 30. it is enacted as follows: Forasmuch as many poor persons chargeable to the place where they live, merely for want of work, would elsewhere maintain themselves, but not being able to give such security as may be expected, on their coming to settle in any other place, it is therefore enacted, That if any person who shall come into any parish or place there to reside, shall at the same time procure, bring, and deliver to the churchwardens or overseers of the parish or place where he shall come to inhabit, or to any of them, a certificate, under the hands and seals of the churchwardens and overseers of any other parish, township or place, or the major part of them, or of the overseers where there are no churchwardens; to be attested by two or more credible witnesses; thereby owning and acknowledging the person mentioned in the said certificate, to be an inhabitant legally settled in that parish, township, or place; Every such certificate, having been allowed of and subscribed by two justices of the place from whence the certificate shall come, shall oblige the said parish or place, to receive and provide for the person mentioned in the said certificate, together with his family, as inhabitants of that parish, whenever they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place, to which such certificate was given: And then and not before, it shall be lawful for such person, and his children, tho' born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place, from whence such certificate was brought. s. 1.

And by the 3 G. 2. c. 29. The witnesses who attest the execution of the certificate by the churchwardens and overseers, or one of the said witnesses, shall make oath before the justices who are to allow the same, that such witness or witnesses, did see the churchwardens and overseers of the poor, whose names and seals are thereunto subscribed and set, severally sign and seal the said certificate; and that the names of such witnesses, attesting the said certificate, are of their own proper hand writing: Which said justices shall also certify, that such oath was made before them. And every such certificate so allowed, and oath of the execution thereof so certified by the said justices, shall be taken, deemed, and allowed, in all courts whatsoever, as duly and fully proved, and shall be taken and received as evidence, without other proof thereof. s. 8.

POOR (Certificate.)

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Procure — a certificate] *H. 3 G. 2. K. and St. Ives.* A *mandamus* was moved for, to compel the churchwardens and overseers to sign a certificate; but the court rejected the motion as a very strange attempt. *Sess. C. V. 2. 128.*

A certificate] The form of which certificate may be this :
To the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland.

WE the churchwardens and overseers of the poor of the parish of Orton in the county of Westmorland, do hereby certify, own and acknowledge, that A. L. yeoman, is an inhabitant legally settled in our parish of Orton aforesaid. In witness whereof we have hereunto set our hands and seals, the — day of — in the year of our lord —

Attested by
 A. W.
 B. W.

A. B. } Churchwardens.
 C. D. }
 E. E. } Overseers of the
 G. H. } poor.

We J. P. and K. P. esquires, two of his majesty's justices of the peace in and for the said county of Westmorland, do allow of the above-written certificate. And we do also certify, that A. W. one of the witnesses who attested the same, hath this day made oath before us the said justices, that he the said A. W. did see the churchwardens and overseer of the poor of the parish of Orton aforesaid, whose names and seals are thereunto subscribed and set, severally sign and seal the same; and that the names of A. W. and B. W. who are the witnesses attesting the said certificate, are respectively of their own proper handwriting. Given under our hands this — day of —

Note, A particular direction of the certificate to any parish, altho' it is convenient in many cases, yet is not required by the statute; and therefore a misdirection will not vitiate it, if it otherwise contains an acknowledgment of the settlement of the persons certified for. As in the case of *St. Nicholas in Harwich v. Woolverstone*, (*Str. 1163.*) The pauper came into the parish of *St. Nicholas in Harwich*, with a certificate from *Woolverstone*, addressed to the parish of *Harwich near Dover Court*. The sessions were of opinion, as there was a mistake of the name of the parish in the address of the certificate, that *Woolverstone* could not be obliged to receive the pauper. But upon debate in the court of king's bench it was ruled they were: for it is not

to be considered as a certificate to any particular parish, but as a general acknowledgment of his being a parishioner of *Woolverstone*, and is conclusive against them for all the world. But whether the parish of *St. Nicholas* might have been obliged to receive that certificate, directed not to them, but to another place, is a question not determined.

Such certificate ——— shall oblige the said parish or place, to receive and provide for the person mentioned therein] Formerly it was held, that a certificate was only conclusive between the two parishes: but now it is held to be conclusive to all the world, as is determined in the following case; viz.

M. 9 An. Honyton and St. Mary Axe. The question was, Whether the parish granting the certificate was bound thereby as to the parish only to which the certificate was granted, or concluded as to all parishes whatsoever? *Parker Ch. J.* delivered the opinion of the whole court: Before the statute, a certificate was only an evidence of a private undertaking between the parishes, in the nature of a contract; but now it is a solemn acknowledgment, like the conuizance of a fine; and thereby the party is owned to be legally settled there: and as all other parishes on this certificate are bound to receive him, so the parish that certifies is concluded as to all other parishes. 2 *Salk.* 535. *Foley* 177.

And the case is put even yet stronger in the following report: *T. 20 G. 2. K. and Hedron.* The parish of *Maidstone* gave a certificate to *Hedron*, acknowledging *Ric. Burden*, and *Mary* his wife, and their four children, to be legally settled at *Maidstone*. Afterwards it appeared, that *Mary* was not his lawful wife, but that he had a former wife then living. Upon which *Maidstone* acknowledged the settlement of the real and true wife, but not of the said *Mary* and her children; and pleaded that it would be hard that they should be forced to take two wives, and different children. But by the court, the parish that certifies must take care for whom they certify; and the certificate is conclusive. *Seff. C. V. 2.* 206. *Str.* 1233.

Whenever they shall happen to become chargeable] Yet a certificate to receive the persons whenever they become chargeable, is not binding against a subsequent settlement; for though it be according to the agreement between the parishes, yet a private agreement in this respect shall not alter the law. *Harrison and Lewis.* 3 *Salk.* 253.

What hath hitherto been inserted under this head, is judged sufficient for this place, to set forth the law concerning

cerning certificates in general; what further belongs to the settlement and removal of certificate persons, will fall in in its due course afterwards.

iii. Of settlement by birth; viz. of bastards, and others.

i. Of bastards.

Note; It is not in this place questioned, who shall or shall not be deemed a bastard, but the settlement only is considered of such as are first supposed to be bastards: other matters relating to them, as concerning their filiation, and maintenance, and the like, are treated of under the title **Bastards**.

A bastard child is prima facie settled where born: And this was the ancient genuine settlement; and a person could have no other, until he had resided for a certain time, as is aforesaid. How far bastards are to be settled where born.

But this rule admits of divers exceptions; which are as follows;

(1) If a woman comes into a place by privity and collusion of the officers where she belongs, and is there delivered of a bastard; such bastard gains no settlement, notwithstanding its birth. *Case of S. 66.* Bastard born in a place by collusion.

And in the case of *Masters and Child, H. 10 W.* It was ruled, that if a woman big with child of a bastard, and settled in one parish, is persuaded to go into another, and there be delivered; this fraud will make the parish chargeable where the mother was settled, though the child was not born there: But if a woman, with child of a bastard, come accidentally into one parish, and is persuaded by some of the parishioners to go into another parish, which she doth, and there is delivered, this shall not charge that parish which persuaded her. *3 Salk. 66.*

(2) Also, If a bastard is born under an order of removal, and before the mother can be sent to her place of settlement, being hindred by water or otherwise; such bastard shall not be settled where so born, but at the mother's settlement. *M. 10 An. Q. and Ickleford. Sess. C. V. 1. 33. Caf. of S. 66.* Bastard born after the order of removal is made out.

(3) So also, If the officers are carrying a woman by virtue of an order of removal, and she be delivered on the road *in transitu*; the bastard shall go with the mother where she is going, by virtue of the order notwithstanding the birth. *E. 10 An. Jane Grey's case. Caf. of S. 66.* Bastard born in removing.

Vol. III. S (4) Again,

Bastard born after the removal and before the appeal.

(4) Again, In the case of *Much-Waltham* and *Peram*, *M. 8 W.* A woman big with a bastard child was removed by order of two justices from *Much-Waltham* to *Peram*. Before the next sessions, she was delivered at *Peram* of a bastard child. At the sessions, *Peram* appealed, and the justices adjudged the woman to be last settled at *Much-Waltham*, and ordered her to be sent back thither. After which, an order was made, to settle the child at *Peram*; which it was moved to quash, because though regularly bastards must be maintained where born, yet in this case, where there seems to be a contrivance it shall not be so. The court seemed to agree to this, and a rule was made to shew cause, but none was shewed. 2 *Salk.* 474.

And further, In the case of *Westbury* and *Coston*, *H. 2 An.* A woman big with child was removed by order of the justices, from *Westbury* to *Coston*: And, pending the order, before the next quarter sessions, she was delivered of a bastard child. *Coston* appealed, and thereupon the order of the two justices was reversed; but the child was sent back to *Coston* as the place of its birth. But by the court, the birth at *Coston*, did not settle the child there, because it was under an illegal order procured by *Westbury*, which order being reversed, the matter is no more than this, that they unjustly procured the woman to go thither. And *Holt* Ch. J. said, Though here be no fraud in this case, yet here is a wrongful removal, and the reversal makes all void *ab initio*: Fraud, or not fraud, is not material in this case; but the settlement of the child depends upon the removal, for if that was wrong, they shall not ease themselves by it. 1 *Salk.* 121. 2 *Salk.* 532.

Bastard born in a state of vagrancy.

(5) So also, By the statute of the 17 *G. 2. c. 5.* Where any woman, wandering and begging, shall be delivered of a child, in any parish or place, to which she doth not belong, and thereby cometh chargeable to the same; the churchwardens or overseers may detain her, till they can safely convey her to a justice of the peace. And if such woman shall be detained and conveyed to a justice as aforesaid, the child of which she is delivered, if a bastard, shall not be settled in the place where so born, nor be sent thither by a vagrant pass; but the settlement of such woman shall be deemed the settlement of such child. *f. 25.*

Bastard born in prison.

(6) A child born in the house of correction, shall be sent to the place of its mother's settlement. 2 *Bulstr.* 358.

And in the case of *Elsmg* and the county gaol of *Herefordshire*, *H. 2 G.* A bastard was born in the county gaol: Resolved,

Resolved, that the settlement was with the mother. *Seff.*

C. V. 1. 94.

(7) *T. 5 G. New Windsor and White Waltham.* The Bastard born under a certificate, parish of *White Waltham* gave a certificate to a man and a woman supposed to be his wife, with which they went into the parish of *New Windsor*, and had there six children. Afterwards, the woman swearing they were never married, the question was, whether (upon that supposition) the children, as bastards, should be settled in the parish where they were born, or in the parish which gave the certificate with their father and mother? And by the court there is no doubt but the bastard of a certificate person is settled in the place of his birth, for he is not such an issue as will follow the settlement of his father or mother, neither is such bastard *his* or *her* child within the intention of the statute, so as to be sent back with the parent. *Str. 186.*

But in this case the point turned chiefly upon the certificate's being conclusive (for as the parish had given a certificate with the man and woman, as husband and wife, the court held that they were not afterwards to be admitted to dispute the validity of such marriage, but adjudged the children to be settled in the parish granting the certificate); Therefore in the case of *Hinton and Lyd-linch T. 15 G. 2.* the matter came under debate again; which was thus: A single woman went into the parish of *Lyd-linch*, with a certificate from *Hinton*; lived there a year, and then had a bastard child. The sole question was, Whether the child should be settled in the parish where born, or in the parish giving the certificate? By the court; The certificate must be taken to be good, and all fraud to be laid out of this case, it being a year that she dwelt in the parish, before she was delivered of the child; and wherever this court, in determining a settlement, adjudges upon the point of fraud, that fraud must be expressly stated; for as fraud is odious, it is never to be presumed. The cases hitherto adjudged as to this point, have either depended on point of fraud, or an illegal removal. So where the child is born in a gaol, he shall be settled in the parish where his mother is; for he shall be construed to be in custody of the law, and in all other respects a parishioner. But the present case stands intirely on the 8 & 9 *W.* which for the encouragement of labour and industry, gave power of removing persons by certificate, which certificate obliges the parish to whom given to receive and continue them in that parish, till they become actually chargeable, and then such person is to be removed, together with his or her family, and in another

place, with his or her *children*, to the place from whence the certificate was brought. The question then is, whether the bastard is included under the words *family* or *children*? and we take it he is not: for the law takes no notice of bastard children, they are *fili nullius, filii populi*, and are *prima facie* settled where born. *Nelf. Bast. Sess. C. V. 2. 170. Str. 1168.*

Bastard not to be removed whilst a nurse child.

Hitherto concerning the settlement of a bastard child: But notwithstanding the child's settlement, yet nevertheless if the mother and the child have different settlements, it seemeth that the bastard child, even as all other children, shall go with the mother for nurture until the age of seven years, and be maintained at the charge of the parish where the mother is settled, as a necessary appendage of the mother, and inseparable from her: for there doth not seem to be any law to force the child from the mother, or to compel the parish where it was born to maintain it whilst it is out of their parish.

As to its being inseparable from the mother, the following case happened, *M. 3 G. 2. Skeffreth and Walford*. The order was, to remove a woman to her settlement; and her bastard child, of two years of age to another parish at a distance from the mother, being the place of its birth. It was objected, that the child being a nurse child, they cannot separate it from the mother, by reason of the care necessary to nurture so very young a child; which none can be supposed so fit to administer as the mother of it; and therefore it should have been sent with her to the place of her settlement. And it was quashed by the court for that reason. *Sess. C. V. 2. 90.*

But although the child may not be separated from the mother, yet if she voluntarily desert it, it seemeth that the cause of nurture then ceaseth, and that then it may be sent to its place of settlement.

2. Of legitimate children.

How far legitimate children shall be settled where born.

In the case of *Rickmansworth* and *St. Giles's*; A child was ordered to be removed from the parish of *Rickmansworth* to the parish of *St. Giles*, as being the place of his birth, the place of his father's last legal settlement being not known: For where the father's place of last legal settlement of a legitimate child is not known, there the child may be sent to the place of its birth, as well as an illegitimate one. *Black. 246.*

H. 8 An. Cripplegate and St. Saviour's. A child of three years of age was removed from one of these parishes to the other, and it appeared in the order, that they removed him there, because he was born there, not having any other settlement. By the court; The father's settlement is the settlement of the children, when it can be found out; otherwise the birth of the child *prima facie* is the settlement of the child, until there is another settlement found out. So a bastard child's settlement is its birth, because it is *filius nullius*; so if they cannot find out the settlement of a legal father, the birth is a settlement of the child. If a child be dropt in a parish, they may remove him to the place of his birth, or where his father's settlement was; and the settlement by birth is only *quousque* they find the father's settlement; and if they never can find that, it is absolute upon them. *Foley* 265.

But here it is to be observed, that in the two cases abovementioned, the point was not in question, whether or no if the father had no settlement, yet if the mother had a settlement, such children should follow the mother's settlement, or should be sent to the place of their birth? and there will appear good opinions in the next course of settlements, that if the father hath no settlement as being a foreigner, or if the father's settlement is not known, yet if the mother hath a settlement, the children in such case shall not be sent to the place of their birth, but to the place of their mother's settlement: But the rule intended to be drawn from these cases, which is sufficient for this place, and which the cases will well bear, is no more than this, that the place of the birth of a legitimate child is the settlement of it, until another settlement be found out.

By the 13 G. 2. c. 29. for confirming and enlarging the powers given by charter to the governors and guardians of the hospital for the maintenance and education of exposed and deserted young children, it is provided, that no child, nurse, or servant, received or employed in such hospital, shall by virtue thereof gain any settlement in the parish where such hospital shall be situate; and consequently the settlement of *foundlings* is not different from that of all other persons: that is, if they are legitimate children, they shall follow their father's settlement, if known; if not, then their mother's settlement; if neither of these is known, or if they are bastards, they shall be settled where they were born; if that cannot be known, which is properly the case of a *foundling*, this seemeth to fall under the general rule, that every person shall be maintained and provided

vided for in the place where he happens to be, until a settlement can be found; for in a christian civilized country, no person ought to be suffered to perish merely for want of necessaries. Only, in the present case, the act takes such children off the parish, and leaves them to the provision of the hospital.

iv. Of the settlement of children with their parents.

Settlement of a legitimate child with the parents.

At what age a child may gain a settlement distinct from the parents.

1. The birth of legitimate children doth not give them a settlement except where the settlement of their father and mother is not known, and then only till it is known. *Foley* 269.

2. Formerly it was held, that a child shall continue with its parents as a nurse child, until it shall be 8 years of age, during which time it shall not be deemed capable of gaining a settlement in its own right; but by the later resolutions it seems to be agreed, that a legitimate child shall necessarily follow the settlement of its parents as a nurse child, or as part of the family, only until it shall be 7 years of age; and that after that age it shall not be removed as part of the father's family, but with an adjudication of the place of its own last legal settlement, as being deemed capable at that age of having gained a settlement of its own. But it seemeth not difficult to determine with exact certainty, at what age a child may have acquired a settlement of its own, distinct from the parents settlement. For by the 5 *El. c. 5. s. 12.* A child of seven years of age may be bound apprentice to a shipwright, fisherman, owner of a ship, or other person using the trade of the seas; and by the vagrant act of the 17 *G. 2.* a vagrant's child of that age may by the justices be put out an apprentice: And so soon as he shall have resided and lodged in a parish for 40 days under the indenture, he will have thereby gained a settlement. So that the precise time, when a person may have gained a settlement in his own right, is at the age of seven years and 40 days.

How far children shall follow the father's settlement.

3. *E. 10 An. 2.* and *St. Giles's.* Order to remove an infant to the parish of *St. Giles's*; because it appeared, that though the father was settled at another place, yet the child was born at *St. Giles's.* Quashed, by the court; for that the place of the settlement of the child is with the father, and not the place where the child was born. *Seff. C. V. 1. 18.*

H. 10 G. St. Giles's Reading and Eversly Blackwater. It was ruled by all the court upon argument, that where a father gains a second settlement after the birth of his child, that

that settlement is immediatly communicated to the child. And a child may be sent to the place of his father's settlement, without ever having been there before. *Seff. C. V. 2. 112. Str. 580. Ld. Raym. 1332.*

M. 12 G. 2. Souton and Sidbury. The question was, whether the children, being above the age of nurture, shall be removed with the father to the father's settlement, where the children had never inhabited? By *Lee Ch. J.* In the case of *Everfly Blackwater*, the court were of opinion, that a child might be sent to the settlement of his father, though it had never been there before, contrary to an opinion of *L. Parker* in a former case. And he said the true distinction, I think, is, that where children have gained no settlement, but continue part of their father's family, they shall follow their father's settlement. *Seff. C. V. 2. 150. Andr. 345.*

T. 2 An. Comner and Milton. A man settled at *Comner* and having several children born in that parish, afterwards removed to *Milton* with his children, and gained a settlement there; and becoming very poor, his children born in *Comner*, were by an order of two justices sent to *Comner*, viz. those that were under seven years old; the justices apprehending, that the place of their birth was the place of their lawful settlement. And this order being removed into the king's bench by certiorari, it was insisted to maintain the order, that the children had gained a settlement in *Comner* by birth, which was not altered or defeated by any subsequent act of their father in gaining a settlement at *Milton*; for his children were with him there only as nurse children, and his settlement shall not be the settlement of the children. But by *Holt Ch. J.* The place where a bastard is born, is the place of his settlement, unless there is some trick to charge the parish; but the place where legitimate children are born, is not the place of their settlement, for let that be where it will, the children are settled where their parents are settled; as for instance, if the father is settled in the parish of *H.* but goes to work in the parish of *B.* and before he gains any settlement there, has a son born in the parish of *B.* and then dies; this child may be sent to the parish of *H.* for it is not the birth, but the settlement of the father, that makes the settlement of his child; and if the father hath gained a new settlement for himself, he hath likewise gained a new settlement for his children, who do not go with him to his new settlement as nurse children, but as part of his family. 2 *Salk. 528. 3 Salk. 259.*

Child emanci-
pated from the
father.

4. T. 7 G. *Eastwoodhay* and *Westwoodhay*. Upon appeal from an order of two justices, for the removal of *Robert Baker*, from the parish of *Westwoodhay* to the parish of *Eastwoodhay*, the sessions state the fact specially for the opinion of the court: That forty years since, *Thomas Baker*, the father of this *Robert*, was seised in fee of a freehold estate in the parish of *Hampstead Marshal*, where he lived till the year 1697, and had this son *Robert*, who was at that time eight years old: That in 1697, *Thomas* the father and all his family removed to *Chevely*, where he rented a tenement of 20l. a year, for two years: That in 1699, he purchased a copyhold estate of 11l. a year in the parish of *Westwoodhay*, whither he removed with his son and servants, and served churchwarden and other parish offices, and paid taxes, and staid there till the year 1716: That in 1716, he purchased a cottage of 1l. 12s. 6d. a year in *Eastwoodhay*, and went and lived upon it till his death: but *Robert* the son staid behind in *Westwoodhay*, where he married a wife, and has worked ever since on his own account, and that he is 30 years old. Upon the whole the sessions confirm the order of the two justices for his settlement at *Eastwoodhay*. It was moved to quash the order of sessions, for that the settlement of *Robert* the son is either at *Hampstead Marshal*, where he waas born, and where he lived till eight years old; or if it should be carried so far, as that he gained a new settlement with the father, by removing with him as part of his family, according to the case of *Cunner and Milton*, yet that can carry him no farther than *Westwoodhay*, which is the last place to which he accompanied his father; but let the settlement be in either, it is not material now; the only question being whether here is any settlement in *Eastwoodhay*, for which there is no colour. On the other hand, it was insisted, that let the son be of what age he will, he shall follow the settlement of the father, till he gains one by his own acquisition; and it appearing he had never done any thing to gain a settlement by act of his own, either in *Hampstead Marshal*, *Chevely*, or *Westwoodhay*, then he must follow the settlement of the father as well in *Eastwoodhay* as in any of the rest. *Pratt* Ch. J. The question is not, where this man and his family are settled, but whether there appears a settlement of him in *Eastwoodhay*? If he had gone thither with his father, as part of the family; possibly it might have been a settlement of of him there: but by staying behind, he was divided from his father, and therefore there is no colour to make it a settlement in *Eastwoodhay*. I think his settlement is in

West-

Westwoodhay, which was the last place where he lived as part of the father's family. To which the rest of the court agreed: And the order was quashed. *Str.* 438.

E. 2 G. 2. St Michael's Norwich, and St Matthew's Ipswich. Two justices made an order, to remove *Edmund Williams*, *Anne* his wife, and *Edmund*, *Solomon*, and *Amy*, children of the said *Edmund* the father, from the parish of *St Michael* in *Norwich*, to the parish of *St Matthew* in *Ipswich*. Upon an appeal from this order, the sessions stated the matter specially, *viz.* That *Edmund Williams* the elder, father of *Edmund Williams* the father of the said children, was settled at *Shipton Mallet* in *Somersetshire*; and afterwards removed to *Bruton* in the said county, and had a writing given him from *Shipton Mallet*, acknowledging his legal settlement to be there; by virtue of which he continued at *Bruton* for 20 years, where *Edmund* the son was born; and that he continued there with his father till he was nineteen years of age, and was bred up to his father's business of a woolcomber. Then *Edmund* the son left his father, and came to *Norwich*, and there he married two wives; by the first he had *Edmund* the grandson; and ten years after his wife died. Then he married *Anne* his now wife; by whom he had *Solomon* and *Amy* two other children; since whose birth, about two years ago, *Edmund Williams* the grandfather gained a new settlement at *St Matthew's Ipswich*: But *Edmund* the son hath never lived with his father at *Ipswich*, or any where else, since he lived with him at *Bruton*. The question was, whether the persons removed, to wit, *Edmund* the second, his wife, and three children, should follow the settlement of the grandfather at *Ipswich*, or whether they should not be looked upon as separated from the grandfather's family, especially after so long an interval of time? *Mr J. Reynolds*; I do not see how the father can gain a settlement for the son, so many years after the son has left him. *Lord Ch. J. Raymond*; I think it is odd, that an old man of sixty, who has left his father for 40 years, shall follow the settlement of his father, as oft as his father removes. In the case of young children it is otherwise; for they cannot be severed from their parents, because of nurture. And by the whole court; The reason why we enquire into the ages of children is, because if they are grown up, and above seven years old, they may gain a settlement by their own act; but it is almost a contradiction in terms to say, that a man who has left his father 40 years, shall follow the settlement of his father. *Sess. C. V. 2. 129. Str.* 831.

T. 29 & 30 G. 2. Inhabitants of *Taunton St James's*, and *St Mary Magdalen's*, *Somersetshire*. Case specially stated; That *Robert Bagg* the grandfather of the pauper, being settled in *St James's*, went with a certificate for himself, his wife, and four children, to *St Mary's*; that he resided there some time, and then voluntarily returned to *St James's*, and there the pauper's father was born, and married in *St James's*, and lived and died there; that the pauper was born in *St James's*; that neither the father nor grandfather ever returned to *St Mary's* again: that the pauper was afterwards put out as a poor apprentice by the parish of *St James's* into the parish of *St Mary's*, and served his time there; and never gained any other settlement in any other parish. The two justices having adjudged that he gained no settlement at *St Mary's* by this apprenticeship, because the grandfather's certificate was then subsisting, remove him to the parish of *St James's*. The sessions, on appeal, quash this order. And now it was moved to quash the order of sessions. After argument, on shewing cause;—By *Denison J.* (*Ryder Ch. J.* being dead): This is a case of great consequence, and therefore I shall now give no absolute opinion. Here are two questions; 1. What is the meaning of the certificate act, and how far it shall extend; what is meant by “certificate man and his family”; whether it takes in only his family at the time of his removal, or it will take in all the children he may after have, and those childrens children. At first sight, it seems only to mean persons named in the certificate. It is said, if a child is born after his going into a parish with a certificate, it may extend to that child, but no further. But that is a great doubt. I imagine the words “*tho' born in the parish*” are put in *ex majori cautela*. If a man and his wife go into a parish with a certificate, and have children, and those children have children, it seemeth that they are all comprehended within the word *family* in the statute. But as to this I give no opinion; as the other point may determine the case. 2. Whether this certificate, as it stood when the pauper was put an apprentice, was in force or determined? The case of *Sudbury* and *Uttoxeter* (hereafter following) was different: The pauper had been removed on his becoming chargeable; and the certificate was *functus officio*. Here, the grandfather of the pauper gets the certificate, goes and stays sometime under it, returns, the father of the pauper is born, then marries, lives at *St James's*, and has a family of his own. Now I should be glad to know when the certificate determined; for upon that

that my doubt is founded.—*Foster J.* gave no opinion; but as a certificate is a personal privilege, he seemed to think, that the question was, whether as the grandfather never returned again, it was not a waiver or disclaimer of his privilege; and whether, as the father and son were never in the parish, they could be considered as coming into the parish by certificate.—*Wilmot J.* This is a case of great difficulty. I should think the word *family* would take in grandchildren. A devise to children, will take in grandchildren. In the case of *Sudbury* and *Uttoxeter* there was a removal; and so the parish had availed themselves of the certificate. And the question here is, whether the facts stated in this case do not amount to the same thing. This is a certificate given 54 years ago. It is of great consequence, whether to consider it as being in force so long; especially as no use has been made of it for so many years.—The court took time to consider of it.—On the last day of the term, the court said, they were unwilling to give any opinion upon the first point. On the second, they held, the certificate did not hinder his gaining a settlement by the apprenticeship; but declared, they did it under the particular circumstances of this case; without determining, how far absence or desertion of a certificate should be construed to destroy it.—The order of sessions was confirmed; and the original order quashed.

5. *H. 10 G. St Giles's and Eversly Blackwater.* Though Father dead. the place of the birth of a child, where the father hath no settlement, is the place of the settlement of the child; yet where the father hath gained a settlement, his children, tho' born in another parish, shall be looked on as settled at the place of their father's last legal settlement, and shall be removed thither, as well after the death of their father, if occasion requires, as in his life time, supposing they have gained no settlement of their own. *L. Raym. 1332. Str. 580.*

T. 8 W. K. and Luckington. *Howel* and his wife were settled at *Luckington*, and came to *St Austin's*, and there a child was born. The father dies in the king's service. The question was, who shall keep the child? It was objected, that it was settled where born; for that they could not send it to the father, when he was dead. But by *Holt Ch. J.* The death of the father doth not alter the child's settlement. *Comb. 380.*

So if the father dies before the child is born; yet the child shall be settled where the father was settled before his death. *M. 5 An. 2. and Clifton, Vinet. Settlem. J.*

6. *M.*

Father dead and
the mother a
widow.

6. *M. 1 G. St George's and St Katherine's.* A man settled in *St Katherine's*, married, and had six children born there, and died. After his death, the widow goes into the parish of *St George*, with her six children, and rents a house of 121. a year, and lives in it with her children four months. The single question was, Whether the children should be settled where their father was last settled, or have a settlement with the mother in the parish of *St George*? and the whole court were of opinion, that the six children were settled in the parish of *St George*, where the mother's last settlement was. And by *Parker Ch. J.* There is no distinction between the settlement of children with the father or mother; for they are as much hers as the father's, and nature obliges her, as much as the father to provide for them; so does the law; and every argument that holds for their settlement with the father, holds as to their settlement with the mother. The reason why children shall not gain a settlement, where the widow gains a settlement only by intermarriage, is, because it is then not her family, but her husband's; and she cannot give the children any sustenance without the husband's leave. But in this case, since she is equally punishable with her husband for deserting her children, and therefore could not leave them behind her, they must gain a settlement with her. *Foley 254. Sess. C. V. 1. 69.*

H. 13 G. Woodend and Paulespury. John Buncher was settled at *Woodend*, and died, leaving a widow and one daughter aged 14 years. The widow removed to *Paulespury*, into a messuage and tenement of her own for life, and took her daughter with her, and the daughter lived with her there two years. And the question was, Whether the daughter gained a settlement at *Paulespury*? And it was adjudged that she did; because the mother being a widow, having gained a new settlement after her husband's death, the daughter gained a settlement also as part of her family. And there is no difference between a father's gaining a settlement, and a mother's, in such a case as this; for the mother is obliged to provide for her children after her husband's death, as the father was when living; and she could not leave this daughter behind her, neither could she be removed from her. *L. Raym. 1473. Fol. 256. Str. 746.*

The same resolved in the case of *Barton Tuff and Hap-pisburgh. T. 8 & 9 G. 2. Sess. C. V. 1. 317.*

Father dead and
the mother mar-
ried again.

7. *H. 13 G. Woodend and Paulespury.* If after the husband's death, the wife shall marry again, to a man settled in

in another parish; her children by her former husband must go with her for nurture, yet they are no part of her second husband's family; and therefore gain no settlement thereby, in the parish where the father in law is settled. *L. Raym.* 1473.

T. 2 An. Comner and Milton. 2 *Salk.* 482. *M. 10 W. 3 Salk.* 259. If after the death of the father, the mother marries again, to a husband who is settled in another parish; her children, such of them as are above 7 years old, shall not be removed; those under, shall be removed, but that only for nurture, for they shall be kept at the charge of the other parish, where their father whilst living was settled; and to that parish they may be sent after 7 years old, as to the place of their lawful settlement; for this accidental settlement of their mother, which was only by the marriage with a second husband, and as she is now become one person with him, shall not gain a settlement for her children.

Note; this authority is only produced here, to shew the settlement, as to which it may be good enough; but as to the maintenance (as hath been intimated before, and as will be considered more at large when we come to treat of the maintenance of the poor) it doth not seem sufficiently to appear, how one parish may be compelled to maintain their poor residing in another parish, unless it be in the case of persons residing under a certificate.

8. *E. 8 G. 2. K. and St Mary Berkhamsstead.* The father ran away, and the mother went and resided on an estate devised to her: One question was, whether the children could gain a settlement, by residing with the mother on such estate, where the father had never lived? And it was held by Lord *Hardwicke* Ch. J. That as it did not appear that the father was dead, the court must suppose him to be living; and in such case, the children could gain no settlement but what was derived from their father: But the matter was afterwards referred to the judges of assize. *Sess. C. V. 2.* 182.

Father run away, whether the child can gain a settlement with the mother.

9. *H. 12 G. 2. K. and Westerham.* An Englishman, whose settlement was not known, married, had a child, and ran away: The child was then nine years of age. By the court, the mother and child ought to be settled, where the mother was settled before marriage. *Foley* 252.

Father having no settlement, whether the child shall be settled with the mother.

M. 3 G. 2. St Giles's and St Margaret's. *Sarah Etherington*, with *Dorothy* her daughter aged five years, was removed from *St Margaret's* to *St Giles's*, as being the place of *Sarah's* last legal settlement before her marriage, she having

having married an *Irishman* who had no settlement: And it was adjudged, that *Dorothy* her daughter shall be settled with her mother in the parish of *St Giles*, where her said mother's settlement was before marriage. *Fol. 251.*

T. 9 G. K. and St Paul's, Shadwell. Resolved by *Eyre* and *Fortescue*, that where the father being a foreigner had no settlement, the children should have the benefit of their mother's settlement; for that her right should descend to them, and they should not be sent to the place of their birth. *Sess. C. V. 2. 113.*

H. 10 G. St Giles's and Eversly Blackwater. It was held by the court, that where the father's settlement cannot be found, yet if the mother's can, the child shall have the benefit of that. *Sess. C. V. 2. 112.*

H. 28 G. 2. St John's Wapping and St Botolph's Bishopsgate. A child of an *Irishman* having no settlement in *England*, and supposed to be on board a man of war in the *West Indies*, and of his wife being an *Englishwoman*, was adjudged to go with the mother to the mother's settlement which she had before marriage.

M. 33 G. 2. K. and the inhabitants of Bethnall Green. A man, whose settlement was not known, had married a woman whose settlement was in *St Catherine's* parish. They had a son born in *Bethnall Green*; who married the daughter of a man that was settled in the parish of *St. Leonard's, Shoreditch*; and by her had children born in *Bethnall Green*. These children were adjudged to be settled in *St Catherine's* parish, the place of their father's settlement in virtue of his mother's settlement there.

Father and mother, both dead, and the child's settlement not known.

10. A travelling woman, having a small sucking child upon her, was apprehended for felony, and sent to the gaol, and was hanged: This child is to be sent to the place of its birth, if it can be known; otherwise it must be sent to the town where the mother was apprehended, because that town ought not to have sent the child to gaol, being no malefactor. *Read. Poor. Dalt. 168.*

And where a child is first known to be, that parish must provide for it, till they find another: By *Holt Ch. J. Comb. 364, 372.*

v. Of settlement by apprenticeship.

The statutes relating to the settlement of apprentices, are these following; which I will first exhibit together at one view, and then set forth the judgment of the court of king's bench upon the several parts thereof.

By the 13 & 14 C. 2. c. 12. *On complaint by the church-wardens or overseers, within 40 days after any person shall come to settle in any parish, on any tenement under 10 l. a year; two justices (1 Q.) may remove him to the place where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of 40 days at the least.* By the 1 J. 2. c. 17. *The said 40 days shall be reckoned, not from the time of his coming to inhabit, but from the time of his delivering notice in writing.* And by the 3 W. c. 11. *Not from the time of delivering such notice, but from the time of the publication of such notice in the church.*

Statutes concerning the settlement of apprentices.

But by the said act of the 3 W. *If any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement, though no such notice in writing be delivered and published.* s. 8.

By the 12 An. st. 1. c. 18. *If any person, after June 24. 1713. shall be an apprentice bound by indenture, to any person residing under a certificate, in any parish, township, or place; and not afterwards having gained a legal settlement in such parish, township, or place; such apprentice, by virtue of such apprenticeship, indenture, or binding, shall not gain any settlement in such parish, township, or place; but every such apprentice shall have his settlement in such parish, township, or place, as if he had not been bound apprentice.* s. 2.

And by the 9 & 10 W. c. 11. *No person who shall come into any parish by a certificate, shall be adjudged by any act whatsoever to gain a settlement in such parish, unless he shall bona fide take a tenement of 10 l. a year, or execute an annual office in such parish. (And consequently, not by apprenticeship.)*

And by the 8 An. c. 9. and 9 An. c. 21. *The master shall pay duty of 6 d. a pound, for 50 l. or under, and of 12 d. a pound for every pound above, of money, or of things not money according to their value, given with apprentices, and proportionably for greater or lesser sums: Except money given with parish apprentices, or out of publick charities. The sum given, to be written in the indenture in words at length. And besides the stamps before requisite, the indentures to be moreover stamped with*

with another stamp, denoting the 6d. or 12d. a pound respectively. And if the sums are not truly inserted, or duties not paid or tendered, or indentures not stamped or tendered to be stamped within the times limited: such indentures shall be void, and not available in any court or place, or to any purpose whatsoever.

And by the 31 G. 2. c. 11. No person who shall have been bound an apprentice, by any deed, writing, or contract, not indented, being first legally stamped, shall be liable to be removed from the place where he was so bound and resident 40 days, by any order of removal, or order of sessions, by reason only of such writing not being indented.

General exposition
of the statutes.

1. The statute of the 13 & 14 C. 2. gives power to remove persons within the space of 40 days after they come to reside, but no power to remove them after the said 40 days; and consequently where the overseers have neglected to remove them for 40 days, they become afterwards unremoveable. The statutes of J. 2. and W. 3. do restrain such 40 days residence to be after notice in writing; but the latter clause of the statute of W. takes off that restriction with regard to apprentices; and the reason thereof is, because such notice would be to no purpose, for that the justices cannot upon the complaint of the overseers remove the apprentice from his master, that is to say, they cannot upon complaint of the overseers make void the indenture between the master and his apprentice, by which the apprentice is bound to live with his master, and the master is bound to keep him; for this can only be done upon the complaint of the master or apprentice: and continuing 40 days unremoveable without notice, is the same thing as continuing 40 days removeable, but not removed, after notice; and consequently the party hath gained a settlement. And it is possible that the apprentice may gain as many settlements as there are spaces of 40 days in the term of his apprenticeship; and where he serves the last 40 days, there is his last settlement: Consequently, he may gain a settlement long before his master shall gain one; as where his master's settlement shall arise from executing an annual office: Or, he may gain a settlement, whilst his master shall gain none, as when he resides upon a tenement under 10 l. a year: And of consequence, the master may be removed, when the apprentice cannot be removed; and in such case the master shall be necessitated to apply to the justices, to compel the apprentice to go along with him.

Infant binding
himself.

2. H. 3 G. 2. *Newbury and St Mary's in Reading.* A poor boy of 14, bound himself apprentice for seven years

to

to a weaver. It was argued, that this was not a binding according to the statute, and therefore did not gain a settlement; and that the indenture was void, because an infant could not bind himself. But by the whole court, it did gain him a settlement; for an infant may make an indenture for his own benefit. *Foley* 154. *Andr.* 373.

3. *H. 9 G. 2. K. and St Nicholas, Ipswich.* There was an indenture of apprenticeship, for four years; which the apprentice served accordingly: whereas the statute of the 5 *El.* requires, that it shall not be for less than seven years. And the question was, Whether this should gain a settlement? By the whole court; this indenture was not void, but only voidable; and none could avoid it but the parties: And neither of the parties having taken advantage thereof to avoid it, the apprentice having continued under the same above 40 days, did thereby gain a settlement. *Seff. C. V. 2. 162. Andr. 365. Str. 1066.*

Binding for less term than seven years.

4. *T. 5 & 6 G. 2. K. and Mellingham.* A person was bound by indenture, tho' not actually-indentured; and the sessions adjudged the settlement on the foot of that binding. Exception was taken, that this was a binding without indenture, and not good; and also whatever the writing was, the pauper was no party to it, nor could be concluded by it: and a deed poll will not bind an infant; nor a poor person put out by the overseers without his own contracting; for the statutes which make such covenant binding upon them, do require that the binding be by indenture. And by the court; The exception must be allowed, and the order quashed. *Seff. C. V. 1. 330.*

Binding by indenture not indentured.

And this was the cause of making the statute of the 31 *G. 2. c. 11.* abovementioned, which enacts, that no person bound by writing not indentured, being legally stamped, shall be liable to be removed for that defect only.

5. *H. 4 G. 2. Cureden and Leiland.* On a special order of sessions, it was stated, that a poor boy was bound out apprentice by indenture, and the master had 20s. paid him; that he served three years; but that the master never paid the duty of 6d. in the pound according to the 8 *An. c. 9. s. 39.* which says, that if the duty be not paid, the indenture shall be void to all intents and purposes whatsoever. The case was referred to *Fortescue J.* who went the circuit: And he held it a settlement, because the master had six months to pay the duty in; so that during those six months a settlement was gained; and it should not be in the power of the master to defeat it by matter *ex post facto.* And pursuant to this opinion, the sessions held it

Indenture not stamped.

a settlement. But upon debate in the king's bench, the order was quashed, for they said, it was making the indenture good to one purpose, when the act of parliament had made it void to all intents and purposes whatsoever. And though it was a hard case, they could not break thro' the positive words of the act. *Str.* 903. *Seff. C. V.* 2. 134. *Andr.* 364.

But upon payment of the duty and penalty, and a receipt thereof from the stamp office produced in evidence, the writing is made good. 8 *Mod.* 365.

Apprentice settled, not removable.

6. An apprentice well settled, being with a master removable, cannot be removed with him; but the master may complain on the covenant. *Cases of S.* 211.

Settlement of the apprentice doth not depend on the settlement of the master.

7. *H. 4 An. St Bride's and St Saviour's.* A woman who was settled at *St Saviour's*, with her apprentice by indenture, came and took a lodging in *St Bride's*, and there continued above 40 days with her apprentice, who served her there. This was held by the court, to be a settlement of the apprentice at *St Bride's*, though the mistress had no settlement there. 2 *Salk.* 533.

Inhabitaney to be where the party lodges.

8. *M. 11 G. St John Baptist and St James's Bishop Cannings.* Binding and serving will not make a settlement, but the settlement must be by inhabiting; which cannot be but where the party lodges. *L. Raym.* 1371. *Str.* 594.

E. 3 G. K. and St Olave's Jury. An apprentice is bound to a cobbler, who keeps a stall in one parish, lies in another, and the boy in a third; and the sessions adjudge the settlement where the stall is, because the service was there. But by the court, the boy has gained no settlement in any of the three parishes; for the stall is not sufficient to give him one, the master lying in another parish. And the order was quashed. *Str.* 51.

T. 3 G. St Mary Colechurch and Radcliffe. A boy was bound apprentice to a seafaring man, and served him for a quarter of a year in the day time on land, in the parish of *St Mary Colechurch*, but lay every night on shipboard in *Radcliffe*. But the justices apprehending the settlement to be where the service was, send him thither. It was moved to quash this order, and was likened to the aforesaid case of the cobbler. By *Parker Ch. J.* A man properly inhabits where he lies; as in the case where the house is in two leets, he is to be summoned to that in which his bed is. And the order was quashed. *Str.* 60. *Cases of S.* 105. *Foley* 159.

Note,

1002. (Settlement by apprenticeship.)

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Note, In the above case of the cobbler, it seemeth by the analogy of the other cases with respect both to apprentices and servants, that the cobbler's apprentice gained a settlement in the parish where he lodged. A man may be occupied in several parishes in the day time; but his domicile, his home and habitation, seems to be where he draws to at night.

9. *H. 10 G. K. and Cirencester.* There was an apprentice bound in the parish, who lived there off and on for three quarters of a year. Exception was taken, that this was no settlement, since he might not inhabit 40 days together. But by the court, That is not necessary. And the order for making it a settlement was confirmed. *Str. 579.*

Forty days residence successively not necessary.

10. *E. 9 G. St Olave and All Hallows.* If a master assigns over his apprentice, and the apprentice serves in pursuance of that assignment; he thereby gains a settlement: and it differs not whether he serves with one master or another; for he still serves by virtue of the first indenture. *Seff. C. V. 1. 215.*

Apprentice assigned.

13 *W. Castor and Aicles.* A poor child being bound at *Castor*, his master there assigned him over to another master, who lived in *Aicles*. And it was held, that the poor child should gain a settlement at *Aicles*, where his second master lived; for though the apprentice was not assignable, yet that assignment was not merely void, but amounted to a contract between the two masters, that the child should serve the latter. So that this assignment is good by way of covenant, though it be not an assignment to pass an interest. *1 Salk. 68.*

11. *M. 8 G. 2. K. and St George Hanover Square.* *Alice Wheeler* was bound by indenture a parish apprentice, to *George Lister*, in the parish of *St George*, where she lived above 40 days under the indenture, and gained a settlement: Afterwards she was by parol agreement hired out by the said master to one *Hall* in the parish of *St Mary le bone*, and there lived and lodged above 40 days, that is, for the space of one year and upwards, the said apprenticeship continuing; and the said *George Lister* her master received her wages, and found her cloaths: By the court, the apprentice is well settled in *St Mary le bone*. *Seff. C. V. 2. 138. Str. 1001.*

Apprentice serving another master, but not assigned.

E. 9 G. St Olave's and All Hallows. A person is bound apprentice to a master who lives in *St Olave's*: Afterwards, the apprentice by his master's consent lives with another person in *All Hallows*. By the court; He gains

a settlement in the last place; for a person may serve his master in another parish or place; and although he serves another man, yet it is by consent of his master, and the benefit accrues to his master. *Cases of S. 153. Str. 554.*

M. 3 G. Parishes of Holy Trinity and Shoreditch. Parker Ch. J. delivered the resolution of the court. This is an order for the removal of one *Ferrer* from the parish of *Holy Trinity* to *Shoreditch*; by which it appears, that *Ferrer* was bound an apprentice to one *Truby*, with intent that he should serve *Green*; which he did for three years: And it hath been insisted, that he being bound to *Truby*, who lives in *Trinity* parish, his settlement is there; and not in *Shoreditch*, where the service was. But we are of opinion the justices have done right in sending him to *Shoreditch*, where the service actually was. It is the same thing as if *Truby* had turned him over to *Green*; in which case there would have been no question, but he had gained a settlement in *Green's* parish. *Str. 10.*

Apprentice permitted to work elsewhere, for his own benefit.

12. *E. 30 G. 2. Fremington and Sherwell. Mary Bevans* was bound a parish apprentice to one *Richards* in *Fremington*; who, after some time, declared that he had no business for her; and gave her permission to go and work elsewhere, for her own benefit; and on his recommendation she was hired to one *Mr. Nott* at *Sherwell*, from the first of *June* till *Lady-day*, and served him there, for the wages of 32s. And then went back to her master, with whom she staid 8 days; and then the term of her apprenticeship expired. This was held to be a good settlement at *Sherwell*; for she was not discharged from her apprenticeship, nor intended to be so. Her master only gave her leave to go elsewhere and serve another person, for her own benefit. She returned to her master, and was received by him and staid with him to the end of her term. And consequently, the service with *Mr. Nott* in *Sherwell* was a continuation of the apprenticeship, and performed under it. *Burrow. 306.*

Apprentice hiring, the master being run away.

13. *E. 10 G. Buckingham and Shepton Bechamp. The* master ran away: The apprentice hired himself for a year, and served the year. By the court; He gained no settlement, not being *sui juris*, nor of a capacity to hire himself; otherwise, had it been by consent of his master, or had his indenture been cancelled. *Cases of S. 155. L. Raym. 1352. Str. 582.*

Note; In the *Cases of Settlements*, this case is reported under the name of *K. and Shipton Curry*; by *L. Raymond*, under the name of *Buckington and St Michael Sebington*; by

by Sir *John Strange*, under the name of *Packington* and *Chepton Beencham*. None of all which seem to exhibit the true names of the contending parishes, for there are no such parishes as most of those here rehearsed; and therefore it is presumed to insert the real names of the parishes, which these appellations seem most probably to denote, namely, *Buckington* and *Shepton Bechamp*. And here it may be proper to observe once for all, the great inaccuracy in the names of places and persons, which every where occurs in the books of reports, arising (as it seemeth) from two causes. 1. From the reporter's taking down the name in court by the sound only, which oftentimes may cause a wide difference in the orthography. And, 2. From the hand-writing of the reporter perhaps not being very legible; the case being taken down in a hurry of the pen, and not published but by others after the reporter's death. Where the matter is very notorious, liberty hath been taken throughout this book, to restore such broken words to their genuine and known originals; so as to read instead of *Hedcome* or *Hedcorn*, *Hedcron*; for *Misserden*, *Missenden*; for *Trensham*, *Frensham*; for *Wooden*, *Woodend*; for *Yexford*, *Yokesford*; for *Eutoscater*, *Uttaxeter*; and many other such like.

Mr. *Burrow*, who from his situation, as being master of the crown office, hath opportunity to receive the true names from the records themselves, is extremely useful in this, as in other more important respects; and that, not only in the cases he reports himself, but in others occasionally referred to. In speaking of the proper method of intitling cases of settlement, he observes,—“ It may not be amiss to set forth a general rule, for intitling all cases arising upon orders of removal; the want of knowing, or the want of attending to which general rule, hath been the occasion of infinite confusion, in tabling and citing cases of this sort. The constant method of entering them in the rule book, is, to name the *King* as prosecutor; and the parish last charged with the pauper, and consequently appealing to the court of king's bench, as defendants. For instance: Two justices remove a pauper from *A.* to *B.*; and *B.* appeals to the sessions. If the sessions confirm the order, and *B.* brings the *certiorari*, the rule thereupon is intitled *Rex versus Inhabitantes de B.* But if the sessions discharge the original order, and consequently *A.* remains charged with the pauper, and brings a *certiorari* to remove the orders, then the rule bears for its

"title, *Rex versus Inhabitantes de A.*" (*Burrow* 52.)—Nevertheless, as authors, in reciting these cases, sometimes give the name of one of the parishes, and sometimes of the other; and the case in some instances may be easier apprehended, or explained with less circumlocution, by inserting at the head of it the names of both the contending parishes; that method is endeavoured to be pursued throughout this course of settlements, where both the names can with reasonable certainty be come at.— Sometimes a case is reported, without the name of either of the parishes, but with the name only of the pauper; as *John Giles's case*, *Bridget Bailey's case*, and the like: In these, together with the names of the parishes, it seemeth essential, to retain also the name of the pauper.

Apprentice dismissed, but not discharged, hiring for a year.

14. The son was bound apprentice to his father, who afterwards gave up the indentures of apprenticeship, but did not cancel them: Then the son was hired into another parish for a year, and served the year; and being likely to be chargeable, he was sent by an order to the parish where he lived as an apprentice; because, the indentures being not cancelled, he still continued an apprentice there, *Mod. Ca.* 190. *Dalt.* 180.

15. *H.* 31 *G.* 2. *Austrey* and *Grindon*. *Francis Orton*, being then about ten years of age, was in *April* 1744, bound a parish apprentice to *Samuel Lythall* of the parish of *Grindon*, till his age of 24. He served with his master there under the indenture till *Michaelmas* 1754; at which time, the master, in consideration of 40s. then paid to him by the apprentice, agreed to discharge him; which receipt and discharge were indorsed and written by the master on the indenture, which he then delivered up to the apprentice. The said apprentice then went and hired for a year, and served that year, at the parish of *Higham*. Afterwards, to wit, at *Michaelmas* 1755, he hired for a year, and served that year in the parish of *Austrey*. He was then upwards of 23 years, but not 24 years of age.—The two justices remove him to *Grindon*, judging him to have gained no settlement under the *e* services. The sessions quash the order. It was moved to quash the order of sessions. Against this, it was urged, That the apprentice by his discharge became *sui juris*. No interest at all remains in the parish officers. Their power is only a limited power. And a parish child thus bound, agreeable to the statute of the 43 *El.* is upon the same foot as if he had bound himself; and when of full age, is at liberty to consent to his own discharge, and thereby to put an end to the apprenticeship.

apprenticeship. But if not, yet the service being by his master's leave and consent, it gains him a settlement in the place where it was performed; which was first in *Higham*, and afterwards in *Austrey*. By lord *Mansfield* Ch. J. The whole depends upon the question, Whether he was of age, or under age, at the time of his consenting to the discharge. And by comparing the dates as above, it appears that he was under age; and then his consent signifies nothing. For the consent of an infant apprentice is, as if he had given no consent at all. And if so, his subsequent services can never be considered as performed by the master's leave and consent, and so, as being a service of his master under the indenture; because this is no express and explicit leave and consent given by the master to the particular service (as in the case of *Fremington* abovementioned); but was intended to be altogether general, and is even founded in a mistaken apprehension, that the apprentice could consent to his being discharged; which he, being an infant, was not capable of doing. And the order of sessions was quashed, and the original order affirmed. *Burrow*. 499.

16. *H. 32 G. 2. K. and Westbury*. An apprentice to a man, who at the time of the binding has no certificate, but procures one before the apprentice hath served him 40 days, gains no settlement by his apprenticeship.

Apprentice bound before the execution of a certificate.

17. *M. 14 G. 2. K. and Petham*. Upon a special order it was stated, that the pauper was bound to a certificate man in *Tenterden*, and after living with him there two years, was by him assigned over to a parishioner of *Lidd*, with whom he inhabited and served for the remainder of the seven years. And the question was, whether under this assignment he gained a settlement? And the court were all of opinion, that he gained a settlement in *Lidd*: for the act of 12 *An.* hath not made the binding void, but has only taken away one of the consequences of such binding for the sake of the certificated parish. It never intended to meddle with the case of a legal parishioner's apprentice; and when once there is an assignment to such a one, it is the same as if it had been an original binding. The true construction of the statute is, that in respect of the certificated parish such binding and inhabiting shall give no settlement. *Str.* 1147.

Apprentice to a certificate man, may gain a settlement in an uncertificated parish.

H. 28 G. 2. Dacre cum Bewerly v. High and Low Bishopside. *Jonathan Ivy*, a taylor, being legally settled in the parish of *A.* came with a certificate to the parish of *High and Low Bishopside*, where he continued to inhabit

many years. Afterwards he purchased a freehold of the value of 20 l. and no more, in *Dacre cum Bewerly*; and upon his going to live there, he delivered the said certificate to the proper officer of the parish. During his residence there, *Thomas Thackeray* the pauper was bound apprentice to him by indenture for seven years, and served and inhabited with his master for the whole time in *Dacre*. Two justices make an order for the pauper's removal to *Dacre*, being of opinion that by the service of the apprenticeship he gained a settlement there. On appeal to the sessions, they quash the order of the two justices; and state the case as above.—Mr. *Gould* moved to quash the order of sessions; and argued, that the master removing from the parish to which the certificate was given, and the pauper serving him in a different parish, the certificate can have no effect upon him. By the act of the 8 & 9 *W.* the certificate extends only to the parish giving, and the parish to which the certificate is given. The words of the statute are, “*of the parish, township, or place, to which the certificate was given.*” And in support of his objection, he cited *K. and Petham, Str.* 1147. and the case of *Silton and Wincanton, H.* 21 *Geo.* 2.—Mr. *Norton* answered the objection: The question is, Whether *Thomas Thackeray* by this apprenticeship and service gained any settlement in *Dacre*? By the certificate act, it is not necessary to address the certificate to any particular parish. Suppose the address was general, the person to whom it was given, might go into any parish he pleased, and such parish is bound by law to receive him. 2 *Salk.* 535. By *Holt Ch. J.* All parishes are bound. In this case, the court must consider this as a general certificate, as the order does not state it was a particular one. 2 *Salk.* 535. *Honiton and St Mary Axe*, seems to have been a general certificate. In the case of *K. and Petham*, the only material determination is, that an apprentice assigned by a certificate person will gain a settlement in a third parish; the reason is, because it is the same as if he had originally been bound there. In the case of *Silton and Wincanton*, the only point was, that it was adjudged, that the son of a certificate person, bound an apprentice to a third person in a different parish, will gain a settlement. Neither of these cases apply to the present case. The present is not a new case. *St Nicholas in Harwich and Woolverston, Str.* 1163. is in point. In that case, there was a mistake in the address of the certificate; for which reason, the court of sessions held it would not bind the parish of *Woolverston*; but

but the king's bench held it would, for it is not to be considered as a certificate to any particular parish, but as a general acknowledgment of his being a parishioner at *Woolverston*, and conclusive against them for all the world. So here, this is not to be considered as a certificate to the particular parish of *Bishopside*, but as a general acknowledgment to all parishes wherever he goes with it, as all parishes are bound to receive him. In that case it was held, that the delivery to the parish officer was not necessary: but that does not affect our case; as the order states, that it was delivered to the proper officer.—Mr. *Gould* on the other part: The cases cited by Mr. *Norton* only prove that the certificate is conclusive evidence to bind the parish giving it against all the world, and that all other parishes may use it as such against them; but they do not shew it is conclusive to a third parish, or to the parish to which the certificate person first goes, or that it has any effect upon them; and therefore are not applicable to this case.—*Ryder Ch. J.* delivered the resolution of the court: The question here is, whether the pauper had gained a settlement in *Dacre cum Bewerley*. This depends upon the general question, whether an apprentice to a certificate man in a third parish can gain a settlement in that parish by that apprenticeship, into which third parish the master had a right to come by virtue of his freehold there. The pauper gained a settlement in *Dacre* by virtue of the 3 *W. c. 11.* unless the act of 9 & 10 *W. c. 11* or the 12 *An. st. 1. c. 18.* prevent it. The 9 & 10 *W. c. 11.* has confined a person coming into a parish with a certificate, from gaining a settlement in such parish except by two methods allowed by the statute, renting 10*l.* a year, or executing an annual office in such parish. The settlement then of the pauper is not prevented by this statute. The 12 *An.* extends to an apprentice of a certificate man; but then that act only extends to such parish to which the master came by a certificate, but not to an apprentice in a third parish. It is objected, that the certificate act is general; that is, to receive the pauper when he becomes chargeable against all the world. This statute is the 8 & 9 *W. c. 30.* The words of the statute of the 12 *An.* are words of reference to the 8 & 9 *W.* and therefore give no right to any other parish to remove where the party goes with a certificate, but only to the parish to which the certificate was first given. And a third parish is not obliged to receive him under such a certificate. This certificate was delivered to

an officer of *Dacre cum Bewerley*; but that was unnecessary, because he was under no obligation to give any, by reason of the condition he was in. If they were under any obligation to receive him, he should have brought another certificate. This certificate was not granted to *Dacre*. It should have remained in the second parish, for their protection. *Ivy's* coming to live upon his own freehold, could never make it necessary to have a certificate; because they could not turn him out when he came there. Neither does this certificate fall within the act that gives the certificate originally. The cases cited are not applicable to the present. *St. Nicholas in Harwich v. Woolverston*: The question there was not, whether an apprentice to a certificate man in a third parish might not gain a settlement there; but only, whether by reason of a mistake in the certificate, they could remove him (the certificate man) from thence to the place from whence he came: and the court held they might. Here the case is only, whether an apprentice to a certificate man, in a third parish, has gained a settlement there by his apprenticeship; which depends upon the statutes before mentioned: and those statutes do not prevent it. The case of *K. and Petham*, is a strong case, and most in point, and contradicts the other case. The case of *Honiton and St Mary Axe* does not prove that such person or his apprentice may not gain a settlement in a third parish; but only shews, that the certificate acknowledges the party belongs to that parish who gave it. The statute of 8 & 9 *W.* gives no right to remove a certificate man, but when chargeable to that parish to which the certificate was given; then he may be removed to the parish from whence the certificate was brought. And therefore the act had a particular view to these two parishes; and it is not insisted here, that he was ever chargeable to *Bishopside*. The case of *Silton and Wincanton*, is agreeable in point as to a third parish. The father of the pauper in 1713 came to *Silton* from *Wincanton* with a certificate. While he resided at *Wincanton*, he had a son *John* the pauper born there; who was put an apprentice to an inhabitant of *Horsington*, a third parish: and the court were of opinion he gained a settlement there, because by his apprenticeship at *Horsington*, *Lee Ch. J.* said, he ceased to be part of his father's family. *Dacre cum Bewerley* is the place here bound. Therefore the order must be absolute for quashing the order of sessions. [Note, As to what was said in the case of *St Nicholas in Harwich v. Woolverston*,

tion, that the delivery of the certificate to an officer is not necessary, is only meant, that such delivery is not necessary in order to bind the parish granting the certificate to receive the persons certified for when they shall become chargeable: but the parish to which the certificate is given, cannot be affected by it, until the certificate is delivered to a proper officer. For so are the words of the statute of 8 & 9. *W. c.* 30. that "if any person who shall come into any parish or place, there to reside, shall at the same time procure, bring, and deliver to the churchwardens or overseers of the poor of the parish or place where he shall come to inhabit, or to any of them, a certificate from any other parish or place, owning him to be settled there; such certificate shall oblige the parish or place granting the same, to receive such person when chargeable: and then, and not before, he may be removed back from the place to which the certificate was given."]

18. *H. 6 G. Ivinghoe and Stonebridge.* Upon a special order of sessions, the case was stated for the opinion of the court; that one *Richard Plower* was bound apprentice to *John Emerton*, who was legally settled in *Ivinghoe*; that he served part of his time there, and then the master went with all his family as a certificate man to *Stonebridge*, where he purchased an estate of 60*l.* and after such purchase the apprentice lived with him six months till the apprenticeship expired; and because the statute provides, that the apprentice of a certificate man shall gain no settlement in the parish to which the master goes by certificate, therefore the justices adjudge the settlement at *Ivinghoe*, where the binding, and great part of the service was. But by the court, We think the settlement is in *Stonebridge*; for according to the case of *Burclear and Eastwoodhay, E. 5 G.* when a certificate man makes a purchase, he immediately ceases to be there in nature of a certificate man, and becomes a settled inhabitant: and in this case here is service for six months, as an apprentice, in a parish where the master was legally settled, which is more than sufficient to give a settlement to the apprentice. *Str.* 265.

Certificate discharged by purchase.

19. *H. 28 G. 2. Sudbury and Uttoxeter.* Motion to quash an order of two justices, for removing a pauper *John Bladen*, from the parish of *Uttoxeter* to *Sudbury*; and also an order of sessions affirming the original order. The case was; *Thomas Bladen*, with his wife and children, came to *Uttoxeter*, with a certificate from *Sudbury*, dated Mar.

Certificate discharged by a removal.

18002. (Settlement by apprenticeship.)

Mar. 17. 1728. *Thomas* died there. His wife and children, remaining at *Uttoxeter* under the certificate, became chargeable, and were removed to *Sudbury*, in 1731. *Bridget* the wife died. *John Bladen* the son, Aug. 17. 1732. was bound a parish apprentice to *Edward Bladen* in the parish of *Uttoxeter*, and served out his time there. The justices determined he *gained* no settlement there; apprehending, under the statute of 9 & 10 *W.* that no person under a certificate can gain a settlement, except by serving an office, or renting 10 l. a year. *Ryder Ch. J.* delivered the opinion of the court: (*Wright J.* being absent). The question in the present case is, Whether the pauper has been rightly removed; or whether he is intitled to a settlement at *Uttoxeter*, by serving an apprenticeship there. This question depends on the construction of the 8 & 9 *W. c.* 30. for if he has gained a settlement, he could not be removed (by the exception in that act). And the case of apprenticeship is within the exception; for by the 3 *W. c.* 11. service of an apprenticeship gains a settlement. But it has been objected, that the pauper came in here under a certificate; and the question is, whether he is to be considered now as a certificate person. We are all of us of opinion (my brother *Wright* concurring) that the removal in this case did restore the pauper to a new right of gaining a settlement; for the certificate is as it were *functus officio*, and is discharged by the order of removal. The words of the act are, “*shall oblige the said parish or place to receive and provide for the person mentioned in the said certificate*”; which are satisfied by one order of removal. It has been said, that settlements are to be construed liberally; and this was very rightly held, in the case of *Cornforth and Sherborne*, *E. 15 G. 2.* The act is so far from looking upon a certificate as continuing after an order of removal; that the pauper cannot return again to the place he was removed from, under a penalty. It hath been said, that the order of removal was in affirmation of the certificate: Unto which the answer is, that it destroys the certificate, by satisfying it; in the same manner as payment of a bond destroys the obligation. Suppose that part of the family only were removed; then the certificate might continue as to the rest: like a deed of covenant, wherein some of the covenants may be void, and yet the others remain good. The case of the inhabitants of *Sowerby* and *Hallifax* has been objected on the argument: But that differs from the present case, inasmuch as in that case the pauper was never removed by
virtue

virtue of the certificate as in the principal case ; and this makes an essential difference. Therefore the court is of opinion to quash both the orders.

20. The aforefaid case of *Sowerby* and *Hallifax* was this : Whether discharged by desertion of the certificate.
H. 24 G. 2. The pauper's father came with a certificate from *Hallifax* to *Sowerby*, and during his residence there under that certificate the pauper was born. The father died. The widow and the pauper her son went back voluntarily to *Hallifax*. After some time, they went with a new certificate from *Hallifax* to another place ; and having resided under the new certificate for some time, they returned again to *Hallifax*. After which, the pauper was bound apprentice in the parish of *Sowerby* to which the first certificate was given, and there served out his apprenticeship. And it was adjudged by the court, that he gained no settlement at *Sowerby*, the certificate being not discharged by the pauper's voluntary removal.

But in the case of *Taunton St. James's* and *St. Mary Magdalen's* above mentioned, where the certificate had been given above 50 years before, and no use of it made for a long time, the certificated persons having gone away and never returned, the court adjudged that a settlement was gained by an apprentice in the certificated parish, but declared that they did it under the particular circumstances of that case, without determining generally how far absence or desertion of a certificate shall be construed to destroy it.

21. *T. 12 G. 2. K. and East Bridgeford.* Upon a Master dying. Special order it was stated, that an apprentice upon the death of his master, was with his own consent turned over by the widow (who had taken no administration) to another master, whom he served. And the court held it a good settlement in the last parish, within the reason of the case of *Holy Trinity* and *Shoreditch* above mentioned, where the apprentice was bound to one master, but served another all the while in another parish, and there gained a settlement. *Str. 1115.*

Note; this is stated to have been by the apprentice's own consent ; and consequently by the assignment it became, as it were, a new apprenticeship : and the point seemeth not to have been in question, whether by the death of the master the apprenticeship was determined. But in the case of *K. and the parish of Silkston, E. 27 G. 2.* It was moved to quash an order of sessions, upon this state : *George Whitworth* was put out as a parish apprentice at *Ekren* ; served several years ; ran away three quarters before he became 21 years

years of age: his master dies; after which he hires himself for a year at *Silkston*; and after that, another year; and served both those years; and received the wages to his own use. The executors knew of these services, and suffered him to remain in them without molestation. And the cases were mentioned of *K. and Peck*, 1 *Salk.* 66. *Baxter and Burfield*, *Str.* 1266. The question was, Whether the apprenticeship was determined by the death of the master, and the apprentice thereby become *sui juris*? The order of the two justices was, that he had a settlement at *Silkston*; the order of sessions, that it was at *Ekren*. The court, on removal of these orders, held, that he gained a settlement at *Silkston* by his service there; and quashed the order of sessions.

Apprenticeship
not good by in-
denture, shall not
enure as a ser-
vice.

22. *M. 5 G. 2. Salford and Storeford*. It was moved to quash an order of two justices confirmed at the sessions. The sessions state the case specially, that one *Lineacre* had been bound an apprentice by indenture, and served his master the last two years of his apprenticeship in the parish of *Salford*; but that his indenture was not stamped. However, the justices adjudged this to be good settlement by way of a service, though not as an apprenticeship; and accordingly removed his wife and two daughters from the parish of *Storeford* to the parish of *Salford*. But the court held this to be no settlement, on the authority of *Cureden and Leland*; and quashed the order. 2 *Barnardist.* 39.

vi. Of settlement by service.

In like manner as under the last head, I will first set down the whole law relating to the subject before us, and then the adjudged cases upon the several branches thereof.

Statutes con-
cerning settle-
ment by service.

By the 13 & 14 *C. 2. c. 12.* On complaint by the churchwardens or overseers, within 40 days after any person shall come to settle in any tenement under 10 l. a year, two justices, (1 *Q.*) may remove him to the place where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of 40 days at the least.

But by the 1 *J. 2. c. 17.* The forty days continuance shall not make a settlement, but from the time of delivering notice in writing.

And by the 3 *W. c. 11.* From the publication of such notice in the church.

But by another clause in the said act of the 3 *W.* If any unmarried person, not having child or children, shall be law-fully

fully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement therein, though no such notice in writing be delivered and published.

And by the 8 & 9 W. c. 30. Whereas some doubts have arisen touching the settlement of unmarried persons, not having child or children, lawfully hired into any parish or town for one year, it is enacted and declared, that no such person, so hired as aforesaid, shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service during the space of one whole year.

By the 12 An. st. 1. c. 18. If any person after June 24. 1713. shall be a hired servant with any person, who did come into, or shall reside in any parish, township, or place, by means or licence of a certificate, and not afterwards having gained a legal settlement in such parish, township, or place; such servant shall not gain any settlement in such parish, township, or place, by reason of such hiring or service, but shall have his settlement as if he had not been an hired servant to such person. f. 2.

And by the 9 & 10 W. c. 11. No person who shall come into any parish by a certificate shall be adjudged, by any act whatsoever, to have procured a legal settlement in such parish, unless he shall bona-fide take a lease of a tenement of 10l. a year, or shall execute an annual office in such parish: (And consequently shall gain no settlement by service.

On complaint within 40 days] By the the statute of C. 2. persons became settled, if not removed in 40 days. But whereas people came privately into parishes, and continued perhaps 40 days, before they were publickly known to be there; and therefore the statute of the 1 J. 2. did provide, that such 40 days should not gain a settlement, but after the time of delivering notice in writing to the overseers, that such person was come to inhabit in such parish. And whereas in that case, the overseer to whom such notice should be delivered, either through ignorance or wilfulness, might conceal such notice from the inhabitants; therefore the 3 W. did provide, that such 40 days should be accounted from the time of the publication of such notice in the church, and not otherwise. But then by the subsequent clause of the statute of the 3 W. it is enacted, that if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged a good settlement therein, though no such notice in writing be delivered and published: And the reason thereof is this, because that such notice would not avail; for that the justices, upon complaint of the overseers, who are no parties to the contract, cannot

General exposition
of hiring
and service.

make void the contract between the master and servant, by which the servant is bound to continue with his master, if he requires it. And therefore upon this act, if the servant was hired for a year, and served 40 days under that hiring, he was not removeable, and gained a settlement; and so in every place where he served 40 days under such hiring, he there gained a settlement; and where he served the last 40 days, there was his last settlement. But this easy method of acquiring settlements, causing servants to become insolent, at last the statute of 8 & 9 W. was made, which enacteth, that *no such person so lawfully hired into any parish or township shall be adjudged to have a good settlement there, unless he shall continue in the same service during the space of one whole year.* But if he shall continue in such service during the space of one whole year, his settlement in all other respects shall be as before; that is to say, every continuance of 40 days unremoveable during such service for the year shall be deemed a settlement; and where he continues the last 40 days, there is his last settlement. But there hath been much doubting, what shall be deemed a hiring for a year, and also what shall be deemed a service for a year, within the sense of these statutes; and what relation such hiring and service shall bear to each other: The arguments for and against which on each side, in the adjudged cases hereafter following, will be the better understood, from this short historical account which hath been given, of the progress of the law relating to this matter.

Whether the servant may be removed from the master.

Two justices, (1 Q.) may remove him] But it hath been observed before, that the justices upon the complaint of the parish officers, cannot remove the servant from his master; because they cannot upon such complaint dissolve the contract betwixt the master and his servant, to which contract the officers are no parties; for that can only be done upon the complaint of the master or servant. Therefore if a maid servant shall happen to be with child, which child is likely to be born a bastard; yet if her master is willing to keep her, the parish cannot remove her; but the master, if he pleases, may complain to a justice of the peace, that she is less able to perform the service, and the justice (if he sees cause) may discharge her, and then the parish by order of two justices may remove her.

But although regularly the servant cannot be removed from the master, yet the master may be removed from the servant; as if the servant hath gained a settlement in the parish,

parish, and the master hath gained none, which may often happen, the settlement of the servant no way depending upon the settlement of the master; in such case, if the parish will remove the master, they cannot remove the servant; but the master may complain to the justices, who may compel the servant to go along with him.

If any unmarried person, not having child or children] *E. Unmarried person, hiring.*
 10 *An. Antony and Cardigan.* A man having a daughter, which daughter was married and settled elsewhere, hired himself for a year, and served the year: By the court, He is a single person within the meaning of the act, tho' not expressly within the letter of it. The meaning of the statute was, that he might not bring any consequential damage to the parish, which he cannot possibly do here. And they held that the man, notwithstanding he had a child, gained a settlement by virtue of that service. *Cases of S. 7. Foley 131.*

E. 1 An. Faringdon and Witty. A servant hired for a year, served half a year of the time, and married. The question was, Whether the justices, on complaint of the overseers, could make an order to remove him to the place of his last legal settlement? By the court, The contract between the master and servant was not dissolved by the marriage; and admitting it might be dissolved by an order made on complaint of the master, yet without that, and upon complaint of the officers only, it could not be dissolved. And the marriage doth not hinder the service; the contract continues; and if the man performs his service, he gains a settlement. *2 Salk. 527.*

The same resolved, *M. 1 G. 2. K. and Sutton. Sess. C. V. 2. 121.*

T. 27 G. 2. Hanbury and Tarbick. The pauper was hired for a year at *Hanbury*; served three quarters of the year; then married; whereupon his master took him before a justice, who allowed the master to discharge him for marrying within the year, but made no order in writing. The question upon this was, whether the servant was properly discharged within the statute of the *5 El. c. 4. s. 5.* By *Lee Ch. J.* and the court: Here is no act of jurisdiction in the justice, having made no order in writing. Though the master might dispense with the service by parol, a justice of the peace cannot, who hath his jurisdiction by statute, and every thing he does in pursuance of it must be by order, and that is examinable in the court of king's bench. Therefore the court held, this was no

discharge of the service. And they said that the justice can only, by the said statute, discharge for *reasonable cause*; and that marriage it self, as such, is not a reasonable cause; the same being no offence, nor inconvenience to the publick.

E. 31 G. 2. *Bank Newton and Marton.* George Ayrton, the pauper, and his wife, being legally settled at *Bank Newton*; he the said George Ayrton, on the 16th of *February* 1738, agreed with John Wilcock, a son of Henry Wilcock of *Marton*, by order and on behalf of his said father, to serve the said Henry Wilcock, for a year from the 24th of the same month of *February* (when his father's then servant was to go away), at 5 guineas wages, in case the said Henry Wilcock should approve the said terms. On the 18th of the said *February*, the wife of the said George Ayrton died, without issue. On the 24th of the same month, the said George Ayrton went to Henry Wilcock, and Henry asked him, upon what terms his son and he the said George had agreed. Which terms he the said George repeated, as above. Whereupon, he the said Henry Wilcock said, that he did agree to the said terms. And the said George Ayrton did then enter upon, and continue in the said service for a year. It was objected, that this man was not an unmarried person at the time of the hiring, to wit, on the 16th of *February*. — Unto which it was answered, that the contract was not compleat, but a mere nullity, till the assent of the principal (the father), which was, on the 24th. For he had it in his power to disapprove. It was not binding, till his assent was given. For the agent only acted under a limited authority. And when the principal did assent, the servant was unmarried. — And by the court, It is clear, that the hiring was on the 24th. For the father might have dissented from the conditional agreement made by his son on the 16th. And, consequently, they held, that this hiring and service did gain a settlement at *Marton*, where the service was performed. *Burrow.* 545.

Whether the hiring for a year shall be by one intire contract.

Shall be lawfully hired into any parish or town for one year. These words do introduce one great subject of debate, namely, What shall be deemed a sufficient hiring for a year within these statutes, by virtue whereof a person shall be intitled to gain a settlement? Concerning which it hath been resolved as follows:

H. 10 W. *Bridget Baily's case.* Bridget Baily before the 25th of *March* 1695, was a settled inhabitant in the parish of *Overton* in *Hampshire*; and then about the 25th of *March* she contracted with John Orpwood of *Stephen-*
ton

ton for 20 s. to serve him from the said 25th of *March* to *Michaelmas* following, which she accordingly did; and she made a new contract with him, to serve for a longer time, by virtue of which she served him for a longer time, from *Michaelmas* till *April* following: And it was held, that though there was not an intire contract for a twelvemonth, yet there being a service for a twelvemonth, it gained her a settlement. 12 *Mod.* 224. 3 *Salk.* 257.

On the contrary, in the case of *Horsham* and *Shipley*, *M.* 12 *Ann.* A person was hired from *May-day* to *Lady-day*, then from *Lady-day* to *May-day*; and so on again another year: The question was, Whether this gained a settlement? And the court were of opinion, it did not; for they said the hiring must be for a year. *Foley* 134.

And more expressly, in the case of *Dunsfold* and *Ridgwick*, *M.* 9 *An.* A person was hired for half a year, and after that was hired again for another half year, with the same person, and thereupon served a year in one continued intire service, but by several hirings. By the court; It ought to be one intire contract and one intire service; the one is required by the statute, as well as the other. If a service under several contracts shall gain a settlement, one that serves by the month, by the week, or by the day, may, if he continues a year, gain a settlement. One may hire by the day for charity; but there is danger of being chargeable in hiring such a person by the year. For such a term as a year, it is not supposed a master would hire one, unless able of body, and so a person not likely to become chargeable. 2 *Salk.* 535.

Perhaps it may add some weight to the scale in favour of this latter opinion, if we attend to the following observation; namely, That although the service for a year depends upon the statute of the 8 & 9 *W.* which makes such service necessary to gain a settlement, yet the hiring for a year depends solely upon the statute of the 3 *W.* upon which statute the law was this, that if a person was hired for a year, and served 40 days, he gained a settlement. But no one will say, that if he was hired for half a year, and served 40 days, he should thereby gain a settlement; for that is against the statute. And the 8 & 9 *W.* hath made no alteration at all as to the hiring, but only lengthened the time of the service.

Moreover, the word *lawfully* seems to be of some consideration. The statute says, if such person shall be lawfully hired for one year; and the following statute, reciting the *lawful hiring*, says, if such person shall be so hired as

aforesaid: Now what is a *lawful* hiring? Not a hiring for half a year; for that is by virtue of no law. On the contrary, Lord Coke (1 *Inst.* 42.) says, if a man retain a servant generally, without expressing any time, the law shall construe it to be for one year, for that retainer is according to law. The statute of 5 *El.* says that no servant as therein mentioned, shall be hired *by any means or colour for less time than one whole year*. The statute of the 2 & 3 *P. & M.* concerning the highways, says, that all persons *not being hired servants by the year* shall be liable to work at the highways. And in general, the law never looks upon any person as a *servant*, who is hired for a less term than one whole year; otherwise they come under the denomination of *labourers*. Now being *lawfully* hired, can mean nothing else, but being hired *according to law*. And being hired *according to law*, is the being hired *for one whole year*, and not otherwise.

Unto which may be further added, that in the *aforesaid* case of *Bridget Baily*, both the hirings and the service were clearly before the statute of the 8 & 9 *W.* for the former hiring was about the 25th of *March* 1695, and the second hiring at *Michaelmas* 1695, and the service ended in *April* 1696. Now the session of parliament of the 8 & 9 *W.* did not begin till *October* 20, 1696.

And accordingly Mr. *Viner* cites a manuscript case, wherein *Eyre J.* said, that this case turned upon the point of *service* for a year, and it was a question upon a fact before the 8 & 9 *W.* and a service before this act for 40 days was sufficient; and by the court, this act was made to oust the service for 40 days only, and *doth not alter any thing as to the hiring*. And in the case of *Horton and Houghton*, *T. 3 G.* (10 *Mod.* 392.) it is said, that though it was resolved in this case of *Bridget Baily* that it was a settlement, notwithstanding the service was not subsequent to the hiring, yet still it was held necessary that there should be a service for a year, and a *hiring for a year*. *Viner Settlement. M. 6.*

Concerning this hiring for a year, these other resolutions have been made; *viz.*

Hiring for a year,
part of which
was then past.

(1) *M. 25 G. 2. Ilam and Tutbury.* Two justices remove *T. Smith* from *Tutbury* to *Ilam*. The sessions confirm their order; and state specially, that *R. Port* of *Ilam*, esquire, having heard that *T. Smith* was a likely boy to serve him for a postilion, sent for his father, in order to take his son upon liking. The boy having served 8 weeks, was hired by his master for a year, to commence from the beginning

beginning of the said 8 weeks ; and the boy served a year (including the 8 weeks) and 10 days, and no longer. It was moved to quash these orders. On a rule to shew cause ; By *Lee Ch. J.* This case differs from all that have happened. In *Lidney* and *Stroud*, and *High Wycomb* and *New Windsor*, the servant came originally into the service, upon a contract made at the time of entering into the service, subject only to a condition : The service being performed, the hiring became clear. In the present case, the commencement of the hiring was 8 weeks after the boy had been upon liking, with a retrospect to his first coming into the service. Now a man cannot serve from a day past. By *Foster J.* The cases of *Lidney* and *Stroud*, and *High Wycomb* and *New Windsor*, have carried this matter very far. And I own if these cases had happened now, I should have doubted. There were original hirings there ; but here is no original hiring for a year. I think it is best to adhere to the words of the act ; and I am of opinion this is no settlement within the act. And the orders were quashed.

(2) *T. 3 G. Ranton* and *Haughton*. Order specially stated : *John Evans* was hired with *Ralph Trubshaw* of *Haughton* from *Ash-Wednesday* till *Christmas*, and served him that time. Then he went away from him, and staid with his father in *Ranton*, for about a week. Then he returned to the said *Ralph Trubshaw*, and was again hired with him for 11 months, and served him the said 11 months : Then departed from the said *Ralph Trubshaw*, and took his cloaths with him, and was absent one week. Then he returned to the said *Ralph Trubshaw*, and was hired with him for eleven months, and accordingly served him ; and then left that service, and went to his father in *Ranton*, and staid about one week. Then the said *John Evans* served one *John Sutton* of *Haughton* aforesaid for about three weeks ; then returned to *Ranton* aforesaid, and staid for about a week : and then returned to the said *John Sutton*, and hired with him for 11 months, and served within a fortnight or 3 weeks of the last 11 months, where, by agreement with the said *John Sutton*, to avoid a settlement in the parish of *Haughton* aforesaid, he left him, took his cloaths, and went into the parish of *Gnosall*, and there continued about a week ; then returned to the said *John Sutton*, and continued with him so long as to make up his service of the last 11 months ; and 3 weeks before *Christmas*, the said *John Evans* hired himself again to the said *John Sutton*, for another 11 months, and served him

Hiring for eleven months.

from that time till within 3 weeks of *Michaelmas* following, and then came away and married. The question was, Whether these several hirings were sufficient to gain a settlement in the parish of *Haughton*? *Parker Ch. J.* said, this was an apparent fraud, and different from all the other cases. *Pratt J.* said, I doubt we must take the law to be, that there must be a hiring for a year, and a service for a year: Here the sessions have found it specially, and there is neither hiring nor service for a year: And suppose a man that lives in a parish incumbered with poor, hires a servant for 11 months only, purposely, by way of caution, to prevent a charge upon the parish, the intent is lawful, and how can such hiring and service gain a settlement? And as to the matter of fraud, if there is any, the justices of the peace are judges of that. *Eyre J.* was of the same opinion of *Pratt J.* *Powis J.* being absent. Afterwards, in *Easter* term, after long debate and consideration, the opinion of all the court was, that these hirings and service in the parish of *Haughton* were not sufficient to gain a settlement; and though such hirings as in this case do defeat settlements, yet if that is a mischief, it is to be remedied by the legislature, and not by the court, which is to judge on the law as it stands, *Fol. 137. Str. 83. 10 Mod. 392.*

T. 30 & 31 G. 2. Milwich and Creyton. Two justices remove *Thomas Thacker* and his wife and children from *Creyton* to *Milwich*. The sessions confirm the order, and state specially, That *Thomas Thacker* was hired at *Milwich* for 11 months for 4*l.* 10*s.*; and it was agreed between him and the master, that he should give in a month's service, beyond the 11 months. He served the 11 months, and also the given-in month, except the last 3 days, and he could not say whether he served them or not; but he received the whole 4*l.* 10*s.* wages. It was moved to quash these orders; because this was not a hiring for a year, being only for eleven months; nor a service for a year, because three days are wanting at the end of it. But the court were very clear, that this agreement is a manifest contract to serve for a year, notwithstanding the form of expression; (which, by the way, they considered as an attempt to prevent the man's gaining a settlement, by a very paucity evasion.) The real question is no more than whether 11 and one make 12. There are no particular technical words necessary, to make a hiring for a year. The substance of this agreement is, to serve 12 months, for 4*l.* 10*s.* And what signifies the variation of expression? Every contract to serve, is a contract to serve

serve for a year, unless there be something to explain it otherwise; and certainly there is nothing here to explain it otherwise. And no action could have laid for the wages, till the end of the whole 12 months. And as to the servant's going away three days before the end of the year; the state of the fact doth not support the objection. He only could not say, whether he did or not. But he received the whole 4l. 10s. wages; which at least seems to imply the master's consent or permission. *Burrow.* 371.

(3) *H.* 31 *G.* 2. *Bishop's Hatfield and Saundridge.* A man was hired from Michaelmas to Michaelmas, for 5l. wages, with liberty to let himself for the harvest month, to any other person. He served till the harvest month, and then hired for that month, and received wages for it. During that month, he brewed for his master, and lodged in his master's house at *Saundridge* during the whole year; and served out the remainder of his time, and received his 5l. wages. The two justices, judging that he gained no settlement hereby at *Saundridge*, remove him to *Bishop's Hatfield*. The sessions confirm their order. It was moved to quash these orders. By the court: This is in effect only hiring for 11 months; and the harvest month is the principal month of the year. It is safest, to keep to the statute. If we allow this, we shall not know where to stop. And the orders were affirmed. *Burrow.* 495.

Hiring for a year, with liberty to be absent during the harvest month.

(4) *E.* 5 *G.* 2. *K. and South Cerney.* At *Northleach* are annually held two meetings for the hiring of servants, the one on the *Wednesday* before *Michaelmas*, the other on the *Wednesday* after. The pauper was hired the *Wednesday* after *Michaelmas*, to serve to *Michaelmas* following; which he did. It was urged, that this being a hiring according to the course and custom of the country, was a sufficient settlement. But by the court; This is no settlement upon the face of it; there must be a hiring for a year, and that cannot be dispensed with. *Sess. C. V.* 1. 156.

Hiring a few days after Michaelmas to Michaelmas.

T. 3 *G.* 2. *K. and Westwell.* A man was hired three days after *Michaelmas*, to serve till *Michaelmas* following: The justices held this to be a good settlement; but quashed by the court. 1 *Barnardist.* 354.

H. 5 *G.* *Combe and Westwoodhay.* *Michaelmas-day* was on *Thursday*; and a person was hired upon the *Saturday* following, to serve till *Michaelmas*: And it was held to be insufficient to gain a settlement, being not a hiring for a year. *Str.* 143.

(5) *M.* 1 *G.* *Peperharrow and Frensham.* A person is hired the third of *October* to serve till *Michaelmas* follow-

Hiring for 2 or 3 days short.

ing, and at *Michaelmas* the master says, stay two or three days, and I will pay you. It is said, that this was adjudged to be a settlement, because fraudulent; and if this were allowed, there would be no such thing as a settlement; for every person would hire a servant two or three days after the quarter day, purely to evade the statute. *Cases of S. 80. 10 Mod. 293.*

But Mr. *Foley*, in reporting this case, says, that upon consideration, the court were all of opinion, that this hiring was not sufficient to gain a settlement; for it is not a hiring for a year: and if we once go out of the act, where must we stop? *Foley 135.* And in *Str. 83.* this case is cited, and it is there said, that this was held to be no settlement.

Hiring with one's father.

(6) *T. 13 An. Jessop and Missenden.* Sarah Barnes lived with her father for a year as a hired servant, in a little cottage upon the waste, for 10s. a year, besides what she could get by her service and labour. And whether she gained a settlement thereby, was the question. And the whole court held she did; there is no ground of fraud; for it was to live with her father, who might be grown old. *Fol. 142.*

Hiring to spin at so much a stone.

(7) *T. 13 G. 2. King's Norton and Campden.* Order specially stated. Mary Calcut was hired for a year, to spin yarn at 18d. a stone: and was to provide herself with victuals and lodging. She spun the whole year, and boarded and lodged at her master's, allowing 2s. a week for the same: but upon her examination she said, that by her contract she thought herself at liberty to play or be absent from her work as long as she pleased, only that she was not at liberty to work for any other master. By the court, This case hath all the requisites of the statute, and is a good settlement: for in fact here is a hiring and service for a year; and what her apprehension was, or whether she was paid by the year or by the quantity of her work, was immaterial. *Str. 1139. Sess. C. V. 2. 146.*

Hiring to work 11 hours a day, Sunday excepted.

(8) *E. 31 G. 2. Macclesfield and Sutton.* Joseph Bower, a bastard child, born at Sutton, and maintained by the overseers of Sutton, was hired, with the consent and direction of his mother (he being then about 8 years of age) to Macclesfield, to work at a silk mill there, for the term of 3 years, at 6d. a week for the first year, 9d. a week for the second year, and 13d. a week for the third. The master was not to find him diet or lodging; and the service was to be only 11 hours in the six working days; and all the rest of the time, as well as on Sundays, he was to be at his own liberty and his own master. He continued

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nued 3 years in the said service; but within that time, frequently absented himself from his work, sometimes for a whole day or longer, at other times for several hours in the day; for all which defaults, deductions were made out of his wages. He lodged the whole 3 years with his mother at *Macclesfield*; who received his wages; which not being sufficient to maintain him, the overseers of *Sutton* contributed 6d. a week, during the whole time towards his maintenance. The question was, whether this was sufficient to gain a settlement at *Macclesfield*. By lord *Mansfield* Ch. J. Here is no foundation to imagine that this can be a settlement on the ground of an apprenticeship. The only question is, whether it is a settlement as a hiring for a year and service for a year. The pauper was an infant of only 8 years of age, at the time of the hiring. Therefore he was not bound by the agreement. Indeed he might have affirmed it; (for the contract of an infant is not absolutely void, but only voidable, at his own election :) But the master could not oblige him to stand to it. Then as to the contract it self; it was only to serve 11 hours in the day of the 6 working days, but during all the rest of those days, and the whole Sunday, the servant was at his own disposal. It is in the nature of a contract from week to week; and it cannot in this case be construed to gain a settlement; and it is plain the parish of *Sutton* did not understand it in this light, having contributed to the child's maintenance during the whole 3 years. And the order adjudging it to be a settlement at *Macclesfield* was quashed. *Burrow. 564.*

(9) T. 6 G. 2. *Lidney and Stroude*. Upon a special order of sessions, it was stated, that a maid was hired for a quarter of a year, and if she and her master liked one another, she was to continue the whole year, and have 3l. for her year's wages; that she staid the year out, and had her 3l. And this on debate was held to be a settlement. *Str. 950.*

H. 8 G. 2. *Chipping Wycombe and New Windsor*. A person was hired to go a month on liking, at 5l. a year wages, but to part on a month's wages, or a month's warning on either side; and continued under this agreement above a year in this service, and the wages were paid quarterly. And adjudged a good settlement. *Self. C. V. 2. 163.*

H. 16 G. 2. *Atherton and Barton*. A person hires himself for a year at 4l. wages, and either master or servant to be at liberty to determine the contract at the end of any quarter,

quarter, upon a month's notice. And it is stated, that he served the year out, but that at the time of the hiring the servant declared, he made the agreement in that manner to prevent losing his former settlement. And upon this case, the two justices and sessions held it no settlement. But the court on debate quashed both the orders; for this is the common sort of hiring for a year, with an intention to stay together (as in fact they did); and if this should be determined not to gain a settlement, it would overturn great numbers of settlements that subsist on such hirings. *Str.* 1182.

Hiring by implication.

(10) *E.* 13 G. 2. *Wandsworth* and *Putney*. A boy came to live with Mr. *Falkner*, without any hiring; and then his master told him, that if he staid a year and behaved well, he would give him a livery and wages the next year. He lived there one year and four months, and received a guinea and a half wages. The court inclined to think, that this was a conditional hiring, and that the boy's service was an assent in fact, and that it gained a settlement; but referred the matter back to the sessions to be more fully stated. *Sess. C. V.* 2. 188.

Service where no contract did appear.

(11) *M.* 13 G. A young woman lived with her grandmother for four years, on an allowance of meat, drink, washing, and lodging. But there appearing no contract betwixt the grandmother and the girl, but that she might have left her grandmother at any time, it was adjudged not a hiring within the statute. *Sess. C. V.* 2. 120.

What shall be deemed a service for a year.

Unless such person shall continue and abide in the same service] What shall be deemed the same service within the meaning of this explanatory statute, hath been much controverted. Concerning which there have been the following resolutions:

Hiring for a year, and service for a year, but not under the same hiring.

(1) *H.* 10 W. Case of the inhabitants of *South Moulton*. A maid servant was hired for half a year; which time she served: and then for another year, and served half of that. *Rokeby*, *Turton*, and *Gould*, (*Holt Ch. J.* being absent) held it to be a settlement; because the statute designed only that the party should serve a year. *L. Raym.* 426.

Another case in the same term is cited by Mr. *Blackerby* and others, under the name of *Stephenton* and *Overton*, (which is no other than the case of *Bridget Bailly* above-mentioned) where there was a hiring and service from *Lady-day* to *Michaelmas* and then a further hiring, and a service under that till *April* following; and it was adjudged, that this was a service for a year sufficient to gain a settlement.

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The next case wherein the like was adjudged, was in the time of L. Ch. J. *Parker*, viz. that of *Brightwell* and *Westballam*. E. 1 G. There was a hiring and service from 3 weeks after *Michaelmas* to *Michaelmas*, and then a hiring for a year, and service for 11 months. The Ch. J. said, If there was a service for a year, on a hiring from week to week, and then a hiring for a year, and serving for forty days, that he should adjudge that a settlement. The reason is, because till the last statute was made, a hiring for a year, and forty days service made a settlement; in regard that the hiring for a year shewed that the person was not likely to become chargeable, for that he was able to work. So forty days is a good settlement to an apprentice, in respect of his skill and art, by which he is supposed unlikely to become chargeable. So a person that has paid parish dues, or served offices in a parish, gains a settlement by 40 days, because he is supposed a person of substance, unlikely to become chargeable. But the late act requiring service for a year, as well as an hiring, we think it sufficient if the words be answered, considering this with the design of the former statutes. *Seff. C. V. 1. 87. Foley 143.*

On the other hand, in the case of *Dunsford* and *Rudgwick*, M. 9 An. in the first year of Lord Ch. J. *Parker*, Mr. *Foley* says, the court declared, that there ought to be one entire contract, and one entire service for a year, pursuant to that contract. *Foley 133.*

And Mr. *Blackerby*, in reciting that case, says, it was then held, that there must be one intire hiring, and one entire service in pursuance of such hiring, for a whole year, that must make a settlement. *Black. 244.*

But it must be observed, that this was not properly the point in question; for the question there was, whether a hiring for two half years should be deemed a sufficient hiring, and not what should be a sufficient service under such hiring.

We proceed therefore to the case of *K. and Aynhoe*, M. 1 G. 2. A person was hired for a quarter of a year, and served that term; then he was hired for a whole year, and served three quarters. And this was adjudged a settlement. There was cited for it, *Brightwell* and *Westballam*, *Overton* and *Stephenton*. Lord Ch. J. *Raymond* said, the case of *Westballam* was exprefs to the point, and he would not break into it; but if it had been *res integra*, or a case not adjudged before, he should have thought it ill. Here the service was made previous to the hiring for a year.

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The greater part of the judges thought this case to be against the statute, but that they were more strongly bound by the precedent; and were unwilling to set aside a resolution solemnly adjudged, though not according to their own opinion. *Sess. C. V. 2. 119. Fol. 144.*

And this being settled, there followed the cases of *Hanmer and Ellesmere, M. 4 G. 2. Eardisland and Lempster, H. 6 G. 2. Fyfield Magdalen and Westower, Mich. 11 G. 2.* wherein a hiring and service for part of a year, and then a hiring for a year, and service for so much of that year as made up a year's service in the whole, were adjudged sufficient settlements.

But whatever may be, the rule in the court of king's bench, where the matter seems now to be settled in a good measure, upon the authority of *Brightwell and Westhallam* as abovementioned; it is certain the point is far from being settled among the justices in the several counties. And in truth, the reasons on the one hand may to many persons seem as strong, as the reasons on the other. For it is certain, there can be no lawful service, but under a lawful hiring; and if there can be no lawful hiring but for one entire year, it should seem that there can be no lawful service but for one entire year, pursuant to such lawful hiring. And the case of *Brightwell and Westhallam* seems to proceed upon a supposition, that nothing more is required by the statute, but *hiring for a year, and service for a year*; whereas the words of the statute are, that the party shall be *hired for a year*, and shall continue and abide in the *same service* during the space of one whole year: and it doth not seem very evident, how with any propriety of language, part of one service and part of another service can be called the *same service*: And it seems a little absurd, as lord *Raymond* observed in the case of *Aynhoe* abovementioned, that the service should begin before the hiring; for upon the former statute of the 3^d *W.* the law was not, if a man should first serve for some certain time, and afterwards be hired for a year, and under such a hiring should serve so long as would make up the former service to 40 days in the whole, he should thereby gain a settlement, no more than if an apprentice had been bound and served only 20 days under the indenture, he should have become settled thereupon, by adding 20 days which he had served before the binding, to the 20 days which he had served after: But the statute of the 3^d *W.* required first a hiring for a year, and then a service for 40 days under that hiring: and this statute of the 8th & 9th *W.* makes no alteration therein at all, but only by enacting

enacting that the said 40 days residence shall not gain a settlement, unless the party shall continue in the *same service* for the space of one whole year.—Not to mention, that for any thing which appears in the cases as above recited, the authority of *Brightwell* and *Westhallam* became established, not so much from the incontestable evidence of the thing itself, as from the unwillingness of the court to unsettle a point once established, in order that things may at length come to a certainty.—And after all, both the said cases which seem to have been relied on in that determination, namely the case of *Bridget Baily* between the parishes of *Stephenton* and *Overton*, and the case of the inhabitants of *South Moulton*, were upon hirings and services in whole, or in part (at least) before the said statute of the 8 & 9 *W.* It hath appeared before, that in the case of *Bridget Baily*, the hirings and whole service were intirely before the statute. And in the case of *South Moulton*, there had been a hiring for half a year, and a service for that half year: then a hiring for a year, and half a year's service under that hiring; then there was the removal of the pauper, the appeal at the sessions, the removal of the order of sessions by *certiorari* into the court of king's bench, and the hearing and adjudication there: for all which, there is not the space of a year and a half, from the meeting of the parliament in the 8 & 9 *W.* which was in *October* 1696, to *Hilary* term in the 10 *W.* (when the adjudication was) at the latter end of the year 1697. Besides that, by several clauses in the said act, it seems to have been intended, that it should not take force before the first day of *May* 1697.—However, as this matter is still very far from being settled among the justices in the country, it would spare much trouble in removals and appeals, if the parliament by another explanatory law would finally declare, what shall be deemed a lawful hiring, and what shall be deemed a lawful service, so as to gain a settlement.

(2) *E. 4 G. Ivinghoe* and *Solebury*. A person was hired for a year to one *Knight*, who rented a farm in *Ivinghoe*, and lived with him half a year: The master lets the farm to one *Smith*, and the servant lives the residue of the year with *Smith* in the farm, without any words passed about dissolving the contract with *Knight*, or making any new contract with *Smith*. And at the end of the year, the second master paid him his wages. The question was, If this shall be deemed the *same service*, so as to gain a settlement? By *Pratt* Ch. J. and the court; This is a

Same service, but not with the same master.

good

good settlement: If a master command his servant to live with another for a certain time, it is a service to the first master; and here being no new contract, it is carrying on the service of the first master. And the subsequent master paying his wages did not alter the case; for the contract not being destroyed, he might have brought an action against the first master. *Seff. C. V. 1. 121. Cas. of S. 109. Str. 90.*

E. 17 G. 2. Beccles and Leowstoff. A person was hired to a blacksmith for a year, at 31. a year. During the year, the master gave him leave to work with another smith for three days, with another for a week, and with a third for a fortnight, and agreed that the servant should have the advantage of it; after which he returned and staid out the year, and the master by his consent deducted the proportion of wages for the time he was away: And upon this state of the case, the sessions held no settlement was gained, the first contract being dissolved. But by the court, The order must be quashed, for this is not a dissolution of the contract, but a licence to be absent; and both parties considered it so, by continuing together to the end of the year. *Str. 1207.*

E. 15 G. 2. Laydock and St. Enoder. A person was hired for a year, and served half a year; when the master died: the executor who lived in another parish, asked the servant if he would serve out the year with him: she did so. An now, on the authority of the case of *Ivinghoe*, the court held it a settlement in the executor's parish; for the last service is not to be considered as a new agreement, but a continuation of the first.

And the case of *Ivinghoe* was said to be stronger than this, the vendee there being a stranger; whereas this was the case of an executor, on whom the law cast a privity of contract. And by *Wright* and *Denison* justices; No doubt the servant might have an action on the original contract against the executor for his year's wages; and if the executor refused to let him serve, it would be a release, and would not deprive him either of his wages or a settlement. *Str. 1164. Vin. Settlement. M. 31.*

Same service, but
not in the same
place.

(3) *E. 11 G. K. and Whitechapel.* A person was hired for five years, to work at a glass-house in *Whitechapel*, at the rate of 10s. a week; but never lodged with his master in the house any part of the time, but at another house in the parish: By the court, He has gained a settlement there; for being hired to serve above a year, and having served and resided in the same parish pursuant to such

hiring,

hiring, he hath fully complied with the statute, and it is not material where he lodged, so that it were within the parish. *Seff. C. V. 2. 114. Foley 146.*

T. 12 An. Silvertown and Ashton. A servant maid was hired for a year in the parish of *Ashton*, where she served half a year; then her master, and she with him, removed to the parish of *Patshall*, where her master took another farm; the servant continued with him in the parish of *Patshall* for the other half year: And the question was, Whether she gained any settlement in either of these places; and if she did, in which of them? By the court, Here is what the act requires, a hiring for a year, and a service for a year. For it is the same service; and the statute doth not tie it down to one place. If a person is hired to a master in one parish, and goes with him into another parish; and serves him for one whole year; the parish he continues last in for 40 days before the end of his year, is the place of his settlement: and the reason why the 40 days gain a settlement is, because he comes there with his master, and you cannot remove him from his master, and having continued with him 40 days unremoveable, he gains a settlement. *Foley 188. Cas. of S. 23.*

T. 8 G. St Peter's in Oxford and Chipping Wycombe. Upon a special order of sessions it appeared, that the master of the *Oxford stage coach* hired a servant for a year, to stay in an inn in *Wycombe* where the coach baited, and to take care of the horses: he lived there for the whole year, and the master all the while lived in *Oxford*. The question was, Where that servant gains a settlement, or whether any by that service? And by the whole court, he gained a settlement in *Chipping Wycombe*, though his master never lived there. *Str. 528. Foley 200.*

H. 1 G. Bishop's Hatfield and St Peter's in St Alban's. Two justices remove one *Langley* from *Bishop's Hatfield* to *St Peter's*. Upon appeal, the matter was stated specially, that this *Langley* was a huntsman to one Mr. *Arnold*, and that Mr. *Arnold* lived sometimes in *Westminster*, and sometimes at his house in *Northamptonshire*. but that Mr. *Arnold* had no settlement in *St Peter's*; and that this *Langley* served the last 40 days of his year in the parish of *St Peter's*, with his master Mr. *Arnold*: which the justices at sessions thought gained no settlement for *Langley* in *St Peter's*, and quashed the order of two justices. But the court of king's bench, upon the orders being removed by *certiorari*, quashed the order of sessions, and held *Langley's* settlement to be

be in *St Peter's*, by serving his master Mr. *Arnold* the last 40 days of his year there, though his master *Arnold* had no settlement there. *Foley* 197. *Str.* 794.

T. 8 G. St Peter's in Oxford and Fawley. Mrs. *Cook* lived with her son in law Dr. *Clavering* at *Christ Church*, and hired a servant for a year, who was settled in *St Peter's*. Mrs. *Cook* afterwards goes to *Fawley* upon a visit; and she, with her servant, staid there for three months, and afterwards came back again to *Christ Church*, where the servant ended the year's service, being not 40 days after her return. The question was, Whether this servant gained any settlement at *Fawley*, living with her mistress who was only a visitor? And by the whole court; The settlement of the servant doth not at all depend on the settlement of the master; for if a master hire a servant for a year, and after remove from one parish to another during that year, it may be properly said that the servant is hired in every parish he shall go into with his master; and the parish where he lives with his master the last 40 days of his year, is the place of his settlement. And it is not material to the servant, whether the master goes there under the capacity of gaining a settlement for himself or not; the servant goes there in the capacity of a servant; and it is like the case of a school-boy; he gains no settlement, but the servant that waits upon him will. And it was adjudged that the servant was settled at *Fawley*. *Caf. of Settl.* 139. *Foley* 194. *Str.* 524.

E. 4 G. 2. Goring and Molesworth. A person was hired for a year, and served the year. The person, to whom he was hired, lived at *Goring*, and kept a boat which navigated from *Goring* to *London*, but the servant was not 40 days in the whole year at the parish of *Goring*, but served out the year on board the boat. By the court; This was no settlement at *Goring*. *Sess. C. V. 1.* 327. *Caf. of S.* 219. 1 *Barnardist.* 436.

T. 18 G. 2. St Peter's in Sandwich and Goolaston. A servant was hired for a year, during which he, with his master's leave, went to sea upon the herring fishery, but hired another to do his work in the mean time: he returned at the end of three weeks after the expiration of his year, settled with his master, and received his whole year's wages. This the sessions held was not a service for a year; but the court held it a settlement; saying, he was to be considered all the while as in the service of his master, and the person he found to do his work was his servant, and not the master's; wherefore the order was quashed.

quashed. *Str.* 1232. [In this case it must be supposed, that he had resided with his master 40 days at least, before he went to sea.]

E. 30 G. 2. Alton and Elvetham. This case was argued the last term, and the court took time to consider of it; and this term, Lord *Mansfield* Ch. J. delivered the resolution of the court: This was an order made by two justices for the removal of the wife of the pauper and four children from the parish of *Elvetham* to the parish of *Alton*; and upon appeal to the sessions, the same was there confirmed: But the sessions states the fact specially, That the parish of *Alton* in the year 1722, gave a certificate to the father of the pauper to the parish of *Elvetham*; under which, the father went to the parish of *Elvetham*, and has dwelt there ever since: then it states the pauper and other children being born there, and that the pauper on the 29th of *August* 1734 was hired for a year as a covenant servant by Sir *Henry Calthrop* at *Elvetham*, and served that year out in that parish; that at the expiration of this year, he was hired again as a covenant servant by him for another year, and served that year, but it happened that the last 40 days of the second year were at *Scarborough* in *Yorkshire*; that he did not at the end of the second year quit the service, but on the 29th of *August* 1736, he applied to his master to make a new agreement for another year, when the master said it would be time enough when they returned home to *Elvetham*, whereupon he continued for about six weeks with his master at *Scarborough*, when they returned home to *Elvetham*; then he was hired for a third year, and served that year out in *Elvetham*, and continued in his service for seven years more, and his wages were advanced every year; and afterwards he quitted that service, and married, and had four children mentioned in the order, which was, for removing the wife and four children from *Elvetham* (the husband having left his family) to *Alton* which gave the certificate. — The justices considered him serving altogether in *Elvetham*, and that he could not gain a settlement there. It has been contended, that they were in the wrong, for he ought to be considered as having gained a settlement in *Elvetham*, notwithstanding the certificate. That is not contended for directly, because service for a year of a certificate person will not gain a settlement; therefore it is indirectly contended for, that he has gained a settlement: His master goes (probably for his health) to *Scarborough*, and happens to stay there 40 days; and it is contended, that the servant then gained

a settlement at *Scarborough*, which discharged the certificate, and then he afterwards gained a settlement at *Elvetnam*.—The general question is, Whether this accidental service of 40 days at *Scarborough* acquired a settlement to the servant? It is immaterial, whether the master has or has not a settlement in the place where the service is; because that will not prevent the servant gaining a settlement: But the objection here is, whether the 40 days at *Scarborough* are to be considered barely as a continuation of the service at *Elvetnam*, or a new *bona fide* service at *Scarborough*? There are several cases, where a servant, though locally absent, may yet be considered as continuing his service in the place to which he was hired. So if a servant was ill, and went to *Bath*, by the consent of the master, that would be a continuation of the service. Therefore the consideration here is, of convenience and inconvenience, of justice and injustice, which will have great weight, unless there are authorities which stand in the way. I will consider this first under the circumstances of the case; then, secondly, I will consider the authorities. The general ground upon which this must be determined, if there are no authorities, is this: Substantially, the master lived at *Elvetnam*; he hired his servant to be a servant there; the parish was jealous of the servant coming in there, and got a certificate from *Alton*. Sir *Henry* happens to go to *Scarborough*, as a sojourner for a particular purpose, not as an inhabitant. When they are to make an agreement for a third year, they both consider themselves as absent from home. It would be perilous for these publick places of resort, if such a service were to gain a settlement. Besides, what fraud would be brought upon parishes, if settlements might be gained in this manner, when a parish trusts to certificates? Suppose a person in service has an accident upon the road by breaking a leg, and he stays 40 days at a place, shall that be a settlement? Suppose he stays 40 days with his master in a sea-port being wind-bound, would that gain a settlement? The master's abode here is at *Elvetnam*, which I lay great stress on. The domicil (as the Civilians call it) of Sir *Henry* was not at *Scarborough*.—I shall next consider the authorities cited. The principal of which was the case of *St Peter's* in *Oxford* and *Fawley* (*Str.* 524.) The court will pay regard to former determinations for the sake of certainty. But if an authority were single, and plainly productive of inconvenience, the court would in such case over-rule it. But the present

present authority does not at all contradict the doctrine I have been laying down. This case was cited to shew, that a passage or transitory residence might gain a settlement. I shall state the case as it is in *Strange*; where it is said, that in the case of *Rufford* it was not doubted, but that hiring into an extraparochial place would gain a settlement. And so *Powell J.* somewhere said, that if a servant was hired for a year in *Ireland*, and the service was performed here, it would gain a settlement. But here I cannot but observe, that it is a great pity, that cases should get abroad under the sanction of great names, which being taken from notes that gentlemen took only for their own use, and not by any publick officer appointed for that purpose, are incorrect often in the state of them. The present case, as reported in *Strange*, is most certainly misreported. It is stated, that the pauper was hired for a year into *Christ-church*, without saying how or under what circumstances her mistress lived there; and that her mistress went upon a visit to *Fawley Court*. Now her mistress being a singlewoman could not possibly have any abode in *Christ-church* but as a visitor or friend. And it is farther said, that the only doubt was, whether the settlement gained at *Christ-church* was superseded or not. That could not possibly be so. For she could by no means gain a settlement in *Christ-church*, which was not only an extraparochial place, but a single house only, having been once a monastery, being in nature of one of the king's palaces, which may be extraparochial. I mention this, to shew the incorrectness of cases, which cannot be relied on. This case is also in *Foley* 215. and *Cases of Settl.* 139. reported differently. But all of them together may serve to help us to the truth, and which upon inquiry I find to be this: Mrs *Cook*, the mistress of the servant, had two daughters; one, married to Dr *Clavering* dean of *Christ-church*; the other, to Mr *Freeman* who lived at *Fawley-court*. And she lived alternately with these two gentlemen her sons in law; and was as much at *Fawley-court* as at *Christ-church*, and (as I observed before) it was not possible the servant should be settled at *Christ-church*, because it was an extraparochial single house. This was, I think, the only material case cited at bar; but there is another which I have had mentioned to me, *Bishop's Hatfield* and *St Peter's* in *St Alban's* (*Foley* 197.), where a huntsman was hired by one Mr *Arnold*, who lived sometimes in *Westminster*, and sometimes at *Northampton*, and the servant resided, where the hounds were kept, at

St Alban's; and the only question was, whether the servant could acquire a settlement there by such service, as his master had none: and there was no doubt but he could; for he came exactly within the case of a stage coachman, who was hired to serve at *Wycombe*, though the master lived at *Oxford*; where it was held, that the servant's settlement does not at all depend upon the master's. But that case was very different from the present; for the question was not, whether there was a continuance of service with the master in *Westminster* or *Northampton*, but he was settled by living in that place with the hounds; and the master, I suppose, might be probably a member of parliament; and might have a house to go to for hunting merely, which is a very common case in the neighbourhood of *London*. However there is no precision in the case on which the court can rely; and upon the whole I think it not at all inconsistent with our present resolution; which is, that in the present case the whole of the service was only a continuation of the service at *Elvetham*. However I would have it observed in the present case, that I lay great stress on both the master and servant considering *Elvetham* as their home, as also upon the precedent and subsequent service, and upon the circumstances of the certificate.—There was another objection at bar, but not relied on; that it does not appear but that the husband may be living, and he is not removed, and may have gained a settlement since. But this the court will not presume. If he is living, they must remove him after to his family. And both the orders were confirmed.

And the difference between this case and that of *St Peter's* in *Oxford* and *Fawley*, seemeth to be this; that a visitor, during the time of the visit, may be considered as part of the family of the person visited, and hath there *pro tempore* his home and place of abode; but a person at *Scarborough* or other such like place of publick resort, under the circumstances abovementioned, is only a sojourner, or in the nature of a traveller, or as a guest in an inn, and cannot in any sense within the words of the statute be looked upon as coming to settle there.

[Note, with respect to the aforesaid case of *St Peter's* and *Fawley*, Mr Burrow says, there having been so much doubt and misapprehension concerning it, he has had the curiosity to transcribe it from the original record: which is as follows.—Two justices removed *Mary Norris* from the parish of *St Peter in the East* in *Oxford*, to the parish of *Faaly* in the county of *Oxford* aforesaid. Which order was discharged

discharged by the sessions, upon appeal; it appearing (as it is stated in the order of sessions) that the said *Mary Norris* was hired at *Christ-church* in *Oxford*, an extraparo-
chial place, on the 16th of *May* 1717, for one year, to *Mrs Cooke*, who then lived, and ever since hath lived, with her son in law *Dr Clavering*, canon of *Christ-church* college aforesaid, as a sojourner or boarder; and continued in her service there till the month of ——— in the same year; when *Mrs. Cooke* went, upon a visit, to her son *Mr. Freeman's*, in the parish of *Faaley* aforesaid, where she continued 3 months, upon the said visit; and her said servant *Mary Norris* was with her at the said *Mr. Freeman's*, and continued there in her service all the three months. At the end of which, the mistress returned to *Christ-church*, and there the service expired, she having served her mistress the whole year, in pursuance of the first hiring: And the order of sessions was quashed, and the original order affirmed. *Burrow. 312.*]

(4) *M. 1 G. Pawlett and Burnham.* A person was a covenant servant for a year, but went away three weeks before his year was out, by his own and his master's consent; and was abated 6s. of his year's wages for it. It was objected, that being a covenant servant, this doth import that it was by deed, and then the consent cannot discharge the covenant. By the court; Here is no fraud expressed or implied. It is not within the words of the act, nor the meaning. Can a man compel his servant to gain a settlement *volens volens*? As to the covenant being by deed, and so the service continuing, perhaps he might bring an action on the covenant, and as to that point the service continued; but not as to gain a settlement, where the statute saith he must serve for a year, which is not in this case. *Caf. of S. 84. Foley 187. Sess. C. V. 1. 71.*

Same service within three weeks; by a covenant servant.

(5) *M. 9 G. 2. Seighford and Castle Church.* On a special order of sessions, it was stated, that a person was hired for a year, which he served till the last 12 days, when he went away without the master's leave, and staid till after the year was up, when he returned for his cloaths, and was paid the whole year's wages. And on consideration, that if they once allowed this absence for 12 days at the end of the year (which differed from an absence in the middle of the year, which was purged by taking him again) they should not know where to stop, it was determined that he gained no settlement. *Str. 1022.*

Same service within twelve days.

(6) *E. 7 G. K. and Islip.* A person is hired for a year; and in the year's service his master gives him leave to go

Same service within a few days.

and see his mother for one day, and he tarried three days, and then came home again, and his master took him into his service as before. It was objected, that his staying to see his mother without leave, was a desertion of the service, and the time he staid away takes so much off from a compleat service for a year. But by the court; This will not prevent the settlement; for the master's taking him again is a purgation of the offence, and no interruption of his service. *Caf. of S. 129. Str. 423.*

In the same case it was stated, that the servant for six days was sick, and incapable of any service: And it was objected, that therefore he could not gain a settlement, which is to be acquired only by a service for a year, but here he did not serve for six days, and so there wants so much of a service for a year. But by the court; A servant that lies thus under the visitation of God, which befalls him not through his own default, is and must be taken to be all the while in the service of his master; and if this exception was to be allowed, it might prevent all the settlements in the kingdom. *Str. 423.*

Another circumstance in the same case, was this: The servant, three or four days before his service expired, desired leave of his master to go to a fair, to hire himself into another service. His master refused, and told him, if he went, he should not come into his house again. The servant went notwithstanding; and did not return, until the time of his service was expired. By the court; This is nevertheless a settlement: The request of the servant is a reasonable request, and the law will not suffer a master to shew himself so inhuman to his servant: A master cannot turn off his servant two or three days before the year expires; if he does, the service in point of law continues, and he gains a settlement notwithstanding. *Caf. of S. 129. Str. 423.*

T. 27 G. 2. Hanbury and Tarbick. The servant was hired for a year at Michaelmas, but did not come to his service till three days after Michaelmas day, and served till the day after Michaelmas in the next year. He was absent about two or three days at a time, in the whole a fortnight, without consent, but was always received again. At going away, he agreed to make a deduction of 6s. 6d. of his wages for the time he was absent. — By the court: This case is not distinguishable from the case of *K. and I/sip*. This court has not been so strict in determining upon the service, as they have been upon the hiring. It hath often been held, that though a servant has
been

been absent for a time, yet his master taking him again purges his absence. And there is no difference between an absence in the beginning and in the middle of the service; for he is a servant from the time of hiring.

H. 4 G. 2. K. and Preston. A person served under a hiring his whole year within five days, and then left his master by consent, the parish officers where he lived having first given him 20 s. to leave the parish. The justices held this service to be no settlement, and stated the case specially. It was objected, that this departure was fraudulent. But by the court: The justices might upon evidence have examined into that point; and if they had thought that his departure was fraudulent, they would without question have stated it to have been so; but that not being done, we cannot intend any fraud, nor that the party has gained any settlement, it being agreed on all sides, that he has not served his year. *Nels. Poor.*

T. 8 G. Eastland and Westhorpeley. The fact was stated specially on an order of sessions, that a servant was hired for a year, and the day before the year expired the master told him, that to prevent his gaining a settlement in that parish, he should go away immediately, which the servant refused to do, insisting to serve out the year, whereupon the master turned him out of doors. And the court held this to be such a fraud in the master, as should not prevent the settlement of the servant. *Str. 526.*

(7) *M. 19 G. 2. Crofcombe and St Cuthbert's.* A servant was hired for and served a year in *Crofcombe*. He continued to serve on there without any new agreement for a quarter of a year, when the master removed into a house at *St Cuthbert's*, where the servant continued with him for half a year longer. The question was, Whether this was a settlement in *St Cuthbert's* within the reason of those cases that have held the settlement to be gained where the last 40 days service was? And the court held it a settlement there, for it is still a continuing in the same service within the meaning of the 8 & 9 *W. c. 30.* though there is no new agreement. And upon the whole there has been between this master and servant a hiring and service for above a year. *Str. 1240.*

Same Service continued beyond the year.

(8) *E. 31 G. 2. Caverfwall and Trentham.* Two justices remove *Samuel Brassington* and his wife and children from *Trentham* to *Caverfwall*. The case was this: *Samuel Brassington*, the pauper, being settled at *Caverfwall*, was hired for a year to *Edward Brassington* at *Trentham*, and served him till within 3 weeks of the end of the year; when,

Servant departing by consent.

on some disputes arising betwixt him and his master, he was, with his own consent, discharged from his service; and received all his wages, except what was deducted for the three weeks. As soon as he left his service, he went to *London*, and was absent about a fortnight. Upon his return, at Mrs. *Brassington's* request, (his master being then from home,) he went again into their service; and within a week after the expiration of the first year, his master hired him again for another year; and he served him, in *Trentham*, for about 6 months of that second year, and then left him. — The sessions being of opinion, that, as the pauper had absolutely quitted his service, before the first year was expired, the subsequent service, under the second hiring, though with the same master, could not be taken in aid, so as to make up a year's service, thereby to gain a settlement, confirmed the order of removal. — And, by the court (on a rule to shew cause): Where there has been a hiring for less than a year, and a service under that; and then a hiring for a year, and a continued service under that second hiring so as to make up a year's service in the whole, that hath been allowed sufficient to gain a settlement. But here was a discontinuance. The first contract was absolutely dissolved, and so continued for a fortnight or 3 weeks. Therefore this last service cannot be connected with the former part of the year. And consequently no settlement was gained at *Trentham*. And the orders were affirmed. *Burrow. 391.*

But in the case of *K. and Nether Heyford, E. 32 G. 2.* It was determined, that a hiring for a year, with service till the last five weeks of it, during which five weeks the servant was absent with leave, and with a liberty of returning, is sufficient to gain a settlement.

Whether a certificate person can gain a settlement by service.

Unless he shall take a tenement of 10l. a year, or execute an annual office *E. 15 G. 2. K. and Sherborne.* A certificate man has a son born in the parish to which he was certificated, who when 16 year's old hires himself as a servant to a buttonmaker in the same parish, and serves a year. And upon considering the words of the statute, which declare, That no person who comes in by certificate shall be adjudged to gain a settlement by any act whatsoever, except he takes 10l. a year, or executes an annual office, — the court held, that the son of the certificate man was equally within it; and that therefore the hiring and service in this case gave him no settlement. *Str. 1165.*

The same ruled so again, *H. 19 G. 2. K. and Bray. Str. 1165.*

T. 28 G. 2. K. and Horsley. *Horsley* gave a certificate to *J. Cope* and his family, who went with it to *Hollingsclough*, where his son the pauper was born. The pauper at 12 years old, went to *Peck*, and served a year there; and then returned to *Hollingsclough*, married, and lived there many years. The pauper afterwards was removed from *Hollingsclough*, to *Horsley* (which gave the certificate). Upon appeal, the sessions confirmed this order. Both orders were removed into the king's bench.—By *Denison J.* The whole intent of the certificate act was to indemnify the parish to which he was certificated; and all cases of a third parish are out of this act. Variety of cases have been determined upon that point. *Silton and Wincanton, M. 21 G. 2. Dacre cum Bewerley v. High and Low Bishopside*, this term, are in point. The service in a third parish gains a settlement there. Let the two orders be quashed.

So in the case of *Great Torrington and Bideford, T. 30 & 31 G. 2.* Two justices removed *Mary Bray* from *Bideford* to *Great Torrington*: And the sessions confirm their order. The case was, By and under a certificate from *Lancrafts*, *Mary Bray* came to *Bideford*, and inhabited there some years. Then she was bound apprentice by the officers of the parish of *Lancrafts*; and lived under the indenture, at *Great Torrington*, for several years. After the expiration of the apprenticeship, she hired for a year, and served that year, in *Bideford*. It was moved to quash these orders, which adjudged that she gained no settlement at *Bideford* by this hiring and service; and urged, that having served an apprenticeship in a third parish, she was become quite clear of the certificate, and therefore was as much at liberty to gain a new settlement in *Bideford*, as any uncertificated person could be. And of this opinion was the court. And the orders were quashed. *Burrow. 357.*

And the like was adjudged in the same term, in the case of *K. and Keynsham. Burrow. 358.*

vii. Of settlement by marriage.

1. Heretofore it hath been somewhat doubtful, what shall be deemed a sufficient marriage, so as that a woman shall gain a settlement thereby; and the courts have been favourable in admitting marriages, although not strictly solemnized according to the laws of the church; but now by the statute of the 26 G. 2. c. 33. a great distinction is made,

What shall be deemed a sufficient marriage so as to gain a settlement.

made, between marriages solemnized before the 25th day of *March* 1754, and after that time: for by the said statute it is enacted, that after *March* 25, 1754, all marriages, (except in *Scotland*, and except the marriages of jews and quakers, where both the parties are jews or quakers respectively) which shall be solemnized without licence or publication of banns, or in any other place than a church or publick chapel (unless by special licence from the archbishop of *Canterbury*), or without the consent of parents or guardians (where either of the parties, not being a widower or widow, is under the age of 21), shall be null and void to all intents and purposes whatsoever. And it seemeth that these requisites ought to appear, from the entry thereof in the register book for that purpose.

But a mis-entry thereof in the register book, will not vitiate the marriage; for the marriage was solemnized before: but it may render the proof thereof more difficult. In the case of *St Devereux* and *Muchdeuchurch* in *Hertfordshire*, *E. 2 G. 3*. There was proof of a marriage by two witnesses, who swore they were present on *Feb. 7. 1758*, when a marriage was solemnized in the parish church of *St Devereux*, between *John* and *Susannah Meredith* by the minister of the parish by banns. An entry was made in the register, that they were married by banns; but it was not signed by the minister, parties, or witnesses. *Lord Mansfield Ch. J.* held this a sufficient proof of the marriage, to fix the settlement of the wife in the husband's parish, notwithstanding the said statute; but said he would *ex officio* grant a rule upon the minister, to shew cause why an information should not be granted against him, for not attesting the entry agreeable to the statute.

But if the marriage it self had been solemnized otherwise than according to the statute, it would not have been good. As in the case of *K. and Tenham*, *M. 33 G. 2*. A settlement of a woman in her husband's parish was avoided, her husband being a minor, and not having obtained the consent of his parents or guardians.

The passage into *Scotland* being left open by the act, many persons have found their way thither to be married, in a manner very clandestine and irregular. No case hath occurred, wherein it hath been determined, how far a woman shall obtain a settlement by such marriage in the (supposed) husband's parish. And there seemeth to be diversity of opinions, amongst very learned men, concerning the validity of such marriages.

Lord

Lord *Stair*, in his *Institutions of the law of Scotland*, page 26, says, "The publick solemnity of marriage, is a matter of order, justly introduced by positive law, for the certainty of so important a contract; but not essential to marriage. Thence arises the distinction, of publick or solemn, and private or clandestine marriages: And tho' the contraveeners may be justly punished (as in some nations by exclusion of the issue of such marriages from succession), yet the marriage cannot be declared void and annulled; and such exclusions seem very unequal against the innocent children. But by the custom of *Scotland*, cohabitation, and being commonly reputed man and wife, validates the marriage, and gives the wife right to her terce, who cannot be excluded therefrom, if she was reputed lawful wife, and not questioned during the husband's life, till the contrary be clearly decerned."

Mr. *Erskine*, in his *Principles of the law of Scotland*, pages 62 and 64, says, "It is not necessary that marriage be celebrated by a clergyman. The consent of parties may be declared before any magistrate, or simply before witnesses. When the order of the church is observed, the marriage is called regular; when otherwise, clandestine. Towards a regular marriage, the church requires proclamation of banns in the churches where the bride and bridegroom reside. Formerly, not only bishops, but presbyteries, assumed a power of dispensing with proclamation of banns on extraordinary occasions: but this hath not been exercised since the revolution."

In Mr. *McDouall's* *Institute of the laws of Scotland*, Vol. I. p. 112. he says, "Marriage is perfected by sole consent; for carnal knowledge is only the consummation of it. Marriage is either solemn, or clandestine. A solemn marriage is that which is celebrated by a minister of the established church, or one having the benefit of the toleration act, after due proclamation of banns. This ought regularly to be done three several sundays, in the churches respectively where the parties frequent divine service; but if they belong to an episcopal meeting, it must be done in their congregation, and likewise in the parish churches where the parties reside; and in case the minister of such parish shall neglect or refuse to publish the banns, it is declared sufficient, if done in the episcopal congregation alone. But the publick solemnity is only a matter of order, and not essential to marriage; and therefore by the law of *Scotland*, not only a marriage solemnized by any minister or priest is good, but likewise cohabitation as man and wife, sufficiently ascertains the marriage, not called

in question during their joint lives. Those marriages which are not solemnized according to the order of the church, are termed clandestine. Notwithstanding that clandestine marriages are equally binding with solemn ones, certain penalties are imposed upon the parties, who thereby contravene the order of law; these are, imprisonment for 3 months and a penalty upon the parties, with perpetual banishment or other arbitrary punishment upon the person that solemnizeth the marriage. Of old, the parties lost their respective interests of *jus mariti* and *jus relicte*; but that afterwards was altered. Persons residing in *Scotland*, who marry in *England* or *Ireland*, without proclamation of banns in due course, are subject to the pains of clandestine marriages. And the witnesses to an irregular marriage, are subject to a fine.*

But whether clandestine marriages in *Scotland*, of *English* parties, who resort thither to evade the *English* law, shall be sustained in *England*, hath been doubted. If the temporal court shall write to the bishop to certify, as in a writ of dower, bastardy, or the like, whether the parties were *coupled in lawful matrimony*; it is matter of consideration, what the bishop may certify: the parties undoubtedly were not married according to the laws of the church. And in case of administration to personal estate; it hath been said, that a person who comes to claim any thing by the ecclesiastical law, must prove himself intitled by that law. And very learned men have questioned, notwithstanding that such marriages are valid by the law of *Scotland*, whether they are effectual in *England*. Where parties are bound, by the laws of their own country, to execute any important act or contract with certain solemnities; it is doubted whether they can elude their own law, by going purposely to another country where such solemnities are not essential, and then returning immediately when the act is done. It is a question of publick law; and the most celebrated writers on publick law have holden, that such an act is fraudulent; it is *fraudem facere legi*, which the laws of all nations disallow.—However, there is no doubt at all, but that, for the quiet of families, it is very desirable that a case might happen (as it must sooner or later) wherein this point may receive a judicial determination, or otherwise that it may be settled by a legislative declaration. †

2. It

† In a case of removal, the woman whose name is intended to be specified in the following certificate (*viz.* Mary Walker) was, upon her

2. It seemeth to be a good general rule, that a woman marrying a husband who hath a known settlement, shall follow the husband's settlement. And although in the case of *Uppotterce and Dunsfell*, M. 1 G. it was held, that the wife shall not gain a settlement with the husband, until she hath lived with him 40 days unremoveable as part of his family; yet afterwards, in the case of *K. and Pinceherton*, M. 3 G. it was agreed by the court, that a wife is to be sent to her husband's settlement, though she never lived with him there. And in the case of *St. Giles's and Eversley Blackwater*, H. 10 G. the widow was removed to the deceased husband's settlement, though she had never been there; and it was ruled by all the court, that the removal was good, and that she must be sent to the last legal settlement of her husband, having acquired no other settlement since his death. *Cas. of S. 89. Seff. C. V. 1. 80, 105. V. 2. 112.*

Wife shall follow the husband's settlement.

3. It seemeth also to be agreed, that a wife can gain no settlement, separate and distinct from her husband, during the coverture. As in the case of *Aythorp Roding and White Roding*, M. 30 G. 2. (hereafter following); where the wife, after the husband was run away, went to live upon a copyhold of her husband's, where her husband had never resided: it was held, that although she might not be removed from thence, yet (her husband being living) she could not thereby gain a settlement.

Wife can gain no settlement without her husband.

4. It seemeth also to be agreed, that a woman marrying a husband that hath no known settlement, doth not lose her former settlement which she had before marriage. But the great point of difference hath been, whether such settlement

Case where the husband hath no settlement.

her own oath of the marriage, removed to the place of the supposed husband's settlement, in order that the validity of such marriage might be tried with respect to a settlement; but the parish, to which the removal was made did not appeal. The certificate of the marriage, which she produced, was as followeth:

Graitney. June the 10. 1764.

this is to certify all persons whom so ever it may concern that Thomas Mattison in the parish of Clifton and county of Westmorland and Malley Waker in the parish of mals mehren [Mauld's Meaburn] and forsaid county is lawfully married according to the laws of the church of Scotland given under my hand day, and deat hear of as witnes my hand

John Irving witness
William Scott witness

John Brown Mr

settlement continues to her during the coverture, or it is suspended during the coverture, and only revives after the husband's death. Which point includes in it this question, Whether the parish where the woman was last legally settled before marriage, shall, by barely proving such marriage, avoid the settlement with them during the husband's life? or whether in order to avoid such settlement, it is not also necessary for them to prove, that such woman hath gained another settlement, that is to say, that the husband hath a settlement, and where?

In relation to which case, where the husband hath no known settlement, it hath been adjudged as follows:

E. 2 G. St Giles's and St Margaret's. A woman marries a foreigner; and her husband dies. By the court; She must be sent to the place of her settlement before marriage. *Seff. C. V. 1. 97.*

H. 12 G. Westham and Chiddingstone. It was stated, that a single woman, settled at *Chiddingstone*, was married to man who is since dead, but his settlement did not appear: And by the court, Her settlement before marriage stands. *Str. 683.*

M. 1 G. Uppottee and Dunsfell. A woman is settled in *Dunsfell*; and afterwards marries a vagrant, whose settlement doth not appear. But he goes and lives in *Uppottee*, and dies there. Two justices remove the widow to *Dunsfell*, where she was settled before marriage. And by the court; Where it appears that the husband in his life time had no legal settlement as can be found, there the marriage shall not put her in a worse condition than she was before, and is all one as the case of a *Scotchman* and a foreigner, and she shall not lose her former settlement. *Caf. of S. 89. Seff. C. V. 1. 80.*

Hitherto the cases seem to be agreed, being that the husband is dead. But the difficulty is, where the husband is supposed to be living. And in relation to this point, the following strong cases have been adjudged.

M. 12 An. Dunsford and Wilborough Green. A woman who was settled at *Wilborough*, marries *Archibald Player*, a *Scotchman*, who had gained no settlement in *England*. Two justices remove her from *Dunsford* to *Wilborough*, the place of her settlement before marriage. Exception; this is a married woman, and by her marriage she ought to be settled where her husband was, and this cannot be right; for if the justices may send away a wife, it is making a divorce between husband and wife; and if he is a *Scotchman*, they ought to send her, as part of his family, to the

bordering

bordering counties of *Scotland*, according to the act of the 39 *El.* c. 4. s. 6. The court held, though she was a married woman, yet if her husband had no settlement, she could not gain any other settlement than she had before marriage; and as for divorce it was none; for the husband might come to her as well at *Wilbrough Green* as at *Dunsford*. *Foley* 249. *Caf. of S.* 31.

Note; the act of the 39 *El.* only says, that the *Scotchman* himself, if a vagrant, may be so sent; but says nothing of his family.

M. 3 *G.* *St Giles's* and *St Margaret's*. *Sarah Etherington* was settled at *St Giles's*; and marries an *Irishman*. By the court; The marriage will not put her in a worse condition than she was before; and they held that she continued her settlement, notwithstanding her marriage. *Caf. of S.* 98.

H. 12 *G.* *K.* and *Westerham*. The order specially stated by the sessions was this: It appeared to the court, by the testimony of *Elizabeth Pinchen*, that the said *Elizabeth Pinchen* was, at the time the said order was made, a married woman, and that her husband was one *Thomas Pinchen*, who was born in *Wiltshire*, but in what place or parish he had a settlement, he never informed her, nor doth she know; but that he is run away, and still living, for what she knows. By the court; She ought to be settled where her settlement was before marriage. *Foley* 252. *Sess. G.* *V.* 2. 110.

On the contrary, *H.* 12 *G.* 2. *Stretford* and *Norton*, the case was thus: An *English* woman married an *Irish* man who had no settlement in *England*. He ran away; two justices remove the wife to the place of her settlement before marriage. And it was urged, that there could be no pretence that this separated her from her husband; and if she cannot be sent thither, she can be sent no where. But by *Lee Ch. J.* It is now a settled point, that by the marriage the woman's settlement is suspended, whether the husband has or has not a settlement; for otherwise the justices might separate husband and wife; and therefore to make the order good, it should have appeared that the man was dead.—And the order was quashed by the whole court. And there were cited these two following cases, *viz.* *T.* 1 *G.* *Fanwick* and *Marson*. It was there declared by the *Ch. J.* that the settlement of a woman, who married a vagrant, is suspended during the coverture; and that as the husband cannot be sent to the place of the wife's settlement, so neither can the wife herself, because

a husband and wife, being as it were but one person, cannot be parted. T. 9 G. *Shadwell* and *St John's Wapping*. One *Ridley*, a vagrant, having no settlement, married a woman who had a settlement in *St John's Wapping*, and had four children by her born in *Stepney*. And it was held, that the children were not settled in the place where they were born, but where the wife had a settlement; but that this was suspended during the coverture, and it revived again upon the death of the husband. *Andr.* 307. *Seff. C. V.* 2. 185. *Viner.* *Settlem.* E. 8.

Finally, in the case of *St John's Wapping* and *St Botolph's Bishopsgate*, H. 28 G. 2. it was adjudged as follows: *Margaret Kinley* having gained a settlement in *St Botolph's* parish by hiring and service, afterwards married *Thomas Kinley* an *Irishman*, who had no settlement in *England*. About two years ago, the husband entered on board a man of war bound for the *West Indies*, but *Margaret* heard he was living about two months ago; and the question was, Whether her settlement which she had before marriage ceased, or was in suspense, during the coverture, and she should be looked upon as a casual poor; or she should be sent to the place of her settlement before marriage. After full consideration, *Ryder Ch. J.* delivered the opinion of the court: 1. It is certain *St. Botolph's* was once her settlement, and that is not disputed. 2. That settlement continues till she gains a new one. 3. That she has never yet gained a new one. To the second point he said, a settlement is a permanent thing; it lasts during life, or till a new one is acquired: and there is no case to be found, where it has been determined or ceased sooner. Neither can any person discharge his own settlement sooner, or by any other means. The question is not, whether she gained any new settlement by marriage, but whether her old settlement was discontinued by her marriage with a person that had none? It is absurd to say, she shall lose her own, without getting another. The objection that the husband and wife would be separated, is of no weight here; for they are separated already. I must own the case of *Stretford* and *Norton* is not to be distinguished from the present, and is against our present opinion. To be sure we must have great regard to former resolutions in this court; but we must judge upon the cases before us. How that case came to be determined so, I do not know, but there are at least four authorities the other way (which perhaps might not then be cited), and we think the reason is with the old cases.

cases. The husband may come to her in one parish as well as the other, for he will be a vagrant in both, and liable to be treated as such. The wife's settlement is only suspended during her husband's continuance with her; and when he leaves her, it revives.

5. *H. 9 G. St Michael's and Nunny.* Order of removal, reciting that the wife of a poor person who is now living, had intruded, and was likely to become chargeable, and that the place of her settlement was in the parish of *St Michael*, she is therefore removed thither. It was moved to quash the order, because it did not appear, the husband was at the time of the removal in the parish of *St Michael*, so that it may be they sent the wife away from the husband. But by the court, We cannot intend he was not; if he was in the parish from which he was sent, that indeed would vitiate the order; but as neither of these facts appear against the order, to satisfy us that it is bad, we are not to presume it to be so; and therefore it must be confirmed. *Str. 544.*

Whether the wife may be removed from the husband.

6. Although it is generally true, that no settlement shall be good, which is brought about by fraud or practice; yet it seemeth that the rule faileth in this case, and that if the marriage take effect, the settlement is good: for the two following cases do proceed upon such supposition.

Marriage fraudulently procured.

M. 11 G. K. and Edwards. The overseers were indicted for a conspiracy, in giving a small sum of money to a poor man of another parish, for marrying a poor lame woman of their own parish, and so by this contrivance conspiring to settle the woman in the other parish, where her husband was settled: By the court; If there is a conspiracy, to let lands of 10l. a year to a poor man in order to gain him a settlement, or to make a certificate man a parish officer, or to send a woman big of a bastard child into another parish to be delivered there, and so to charge the parish with the child, these are certainly crimes indictable. But this indictment was quashed, for want of averment, that the woman was last legally settled in the parish relieved by her marriage. *8 Mod. 321. Sess. C. V. 1. 265.*

H. 6 G. 2. K. and Parkins. A single woman of *Studley*, big with child of a bastard, was sent back to *Studley Parkins*, overseer of *Studley*, threatened with all the severity of the law, to force her to marry a stranger of another parish, against both his and her consent, he giving five guineas to the husband, and keeping him in liquor.

1002. (Settlement by marriage.)

By the court; Shew cause why information should not go. *Seff. C. V. i. 176.*

viii. Of settlement by continuing 40 days after notice.

By the 13 & 14 C. 2. c. 12. On complaint within 40 days after any person shall come to settle in any tenement under 10l. a year, two justices may remove him to the place where he was last legally settled for 40 days.

But by the 1 J. 2. c. 17. The 40 days continuance of such person in a parish, intended by the said act to make a settlement, shall be accounted from the time of his delivering notice in writing, of the house of his abode, and the number of his family, if he have any, to one of the churchwardens or overseers of the parish to which he shall remove. *l. 3.*

And by the 3 W. c. 11. The said 40 days continuance of such person in a parish or town, intended by the said acts to make a settlement, shall be accounted from the publication of a notice in writing, which he shall deliver, of the house of his abode, and the number of his family, if he have any, to a churchwarden or overseer. Which said notice in writing, the said churchwarden or overseer shall read, or cause to be read, publicly, immediately after divine service, in the church or chapel, on the next lord's day, when there shall be divine service in the same. And the said churchwarden or overseer shall register, or cause to be registered, the said notice in writing, in the book kept for the poor's account. *l. 3.*

And if any churchwarden or overseer shall refuse or neglect to read, or cause to be read such notice in writing as aforesaid, he shall (on proof thereof by the oath of two witnesses before one justice) forfeit for every offence 40s. to the party grieved, by distress, by warrant directed to the constable of the parish or town where the offender dwells; and for want of sufficient distress, the said justice shall commit him to the common gaol for one month. And if any churchwarden or overseer shall refuse or neglect to register, or cause to be registered, such notice in writing; he shall, on the like conviction, forfeit 40s. to the use of the poor of the parish or town where the offender dwells, to be levied as aforesaid; and for want of sufficient distress, then the said justice shall commit him as aforesaid, for the time aforesaid. *l. 5.*

After any person shall come to settle] But no soldier, seaman, shipwright, or other artificer, or workman in his majesty's service, shall have any settlement in any parish, port-town, or other town, by delivering and publication of

of notice in writing, unless the same be after a dismissal out of the service. *f.* 4.

In any tenement under 10 l. a year] But this hath been always understood of persons coming to settle upon such tenement, as farmers thereof, and not where the same is their own proper estate; and therefore a man's coming to settle upon his own estate is not within the act.

Where he was last legally settled for 40 days] *H.* 10 *G.* Case of Cirencester. It was held, that living 40 days successively was not necessary; and Mr. J. Fortescue said, that living 40 days off and on, is making the case stronger than living 40 days together in a parish. *Seff. C. V.* 2. 40. *Str.* 579.

And, *H.* 12 *G.* 2. *Souton* and *Sidbury*. It was admitted by the counsel, and held by the court as a point indisputable, that it is not necessary upon this statute, that the inhabitancy shall be for 40 days successively. *Andr.* 345.

Notice in writing] But persons executing a publick annual office, or paying parish rates, or being servants for a year, or apprentices by indenture, shall thereby be settled without notice in writing. 3 *W. c.* 11. *f.* 6, 7, 8.

And in general, all persons not removeable may become settled equally without giving notice as with it, for the notice is only intended where the person is removeable; for if he is not removeable, the notice is to no purpose.

In writing] *H.* 3 *G.* 2. *Aldenham* and *Abbots Langley*. Upon a special order of sessions, it was stated, that a poor person forty years ago came into a parish, and lived there ever since; that he attended the leet, amended the highways, had a pew in the church, five children, and did watch and ward. But by the court, Those are not annual offices in the parish, and the 1 *J.* 2. *c.* 17. was purposefully made to avoid these constructive notices, and requires notice in writing; and therefore they held it no settlement. *Str.* 853.

H. 8 *W.* *Talbury* and *Foston*. A person exercised the trade of a blacksmith; was publickly employed by the parishioners, by the bailiff of the lord of the manor, the vicar, and the justice. The question was, Whether this publick way of living was not tantamount to notice in writing, which was only designed to prevent clandestine entries and living. By the court; This might perhaps have satisfied the statute of the 1 *J.* 2. but the 3 *W.*

§ 1002. (Settlement by notice.)

hath particularized the notice, and what shall be tantamount to it, and what not; but this is not among the particulars of the statute, and therefore is not such notice as the law requires. For this being an explanatory law, the court cannot carry the explanation farther than the statute itself hath done, though in an original law the court will make construction according to equity. *Carth.* 396. 2 *Salk.* 476. *Foley* 114.

Publication of the notice] In the case of *K. and Chertsey*. The banns of matrimony of a poor person were published in the church; and it was insisted, that this was a notice sufficient, being in writing, and published in the church: But by the court; This is not sufficient; for the other requisites by the 3 *W.* must be observed; and that being an explanatory act, cannot be taken by equity. 5 *Mod.* 454.

After all, this kind of settlement, by continuing 40 days after publication of notice in writing, is very seldom obtained; and the design of the acts is not so much for the gaining of settlements, as for the avoiding of them, by persons coming into a parish clandestinely: for the giving of notice is only putting a force upon the parish to remove. But if a person's situation is such, that it is doubtful whether he is actually removeable or not, he shall by giving of notice compel the parish either to allow him a settlement uncontested, by suffering him to continue 40 days; or, by removing him to try the right.

ix. Of settlement by paying parish rates.

By the 13 & 14 *C.* 2. c. 12. *Forty days inhabitancy shall gain a settlement*; By the 1 *J.* 2. c. 17. *Such 40 days are to be reckoned from the delivering of notice in writing*; And by the 3 *W.* c. 11. *from the publication of such notice in the church.*

But if any person who shall come to inhabit in any town or parish, shall be charged with, and pay his share, towards the publick taxes or levies of the said town or parish, he shall be adjudged to have a legal settlement in the same, though no such notice in writing be delivered and published. 3 *W.* c. 11. s. 6.

But by the 9 & 10 *W.* c. 11. *Persons residing under a certificate, shall gain no settlement by being rated to and paying any such levies, taxes, or assessments.*

Shall be charged with] *M.* 13 *G.* *Solontongham and Worpleston.* The landlord was rated to the poor for the tene-ment,

ment, as being in his hands, and the *tenant* paid the rate. By the court; The tenant doth not gain a settlement, unless he be both rated and pay. *Foley* 128. *Sess. C. V.* 2. 122.

And this kind of practice may be sometimes, on purpose to avoid a settlement. But it lies in the power of the justices to adjudge whether or no it shall be deemed a fraud.

E. 4 G. 2. Kinsfare and Kingswinford. A person rented a tenement, and paid all parochial taxes for the same in his own right, but was not rated in the parish books; but the name of *Richard Cotes* that rented the tenement before, was kept in the levy books. By the court, This was no settlement, because he was not assessed as well as paid. *Foley* 120.

But yet it hath been adjudged, that it is not necessary that the party should be taxed by name: As in the case of *St Mary le more* and *Heavy-tree*; the rate was charged, not on the person, but on the house, and it was determined by the court, that this rating and payment made a settlement. 2 *Salk.* 478.

So in the case of *K. and Brickhill, E. 7 G.* where a man lived at *Brickhill*, in a place called *Roscoe's* tenement, and paid taxes there by the name of the occupier of *Roscoe's*; this was adjudged to be a sufficient designation of the party, so as to gain a settlement. 8 *Mod.* 38.

T. 31 G. 2. Painswick and Cirencester. The pauper, *Isaac Moorman*, took a house in *Cirencester*, of one *Thomas Clifford*, and agreed to pay the land tax, and poor taxes, and all other taxes. The rating was thus, "*Thomas Clifford*, or tenant." *Moorman* paid the taxes; and the overseers gave receipts to him in his own name. The landlord *Thomas Clifford* lived five miles off. It was urged, that *Isaac Moorman* himself was not rated; being neither expressly named, nor even personally hinted at. But the court was clearly of opinion, that this man was sufficiently charged, to notify to the parish of *Cirencester* that he was an inhabitant there, and consequently gained a settlement by payment of the rates so charged. *Burrow.* 621.

E. 4 G. 3. Openshaw and Gorton. *James Bowden*, settled at *Openshaw*, took a house and two closes at *Gorton*, and the landlord was to pay all taxes and levies but the window tax. The rating was thus, "*Bowden's.*" The landlord himself for some time paid the taxes; and afterwards desired the overseer to take the same of the tenant, and he would allow it to him in his rent. The

rate was paid accordingly in this manner. And the court held this to be sufficient to gain a settlement, saying, that this rate (paid to the overseer) being a tenant's tax, the landlord paid it for him, and *qui facit per alium facit per se*.

And pay] *M. 9 G. 2. K. and Bovindon.* It was held, that payment to the poor doth not give a settlement, unless the party was rated, for the rating is the act of the parish, and not the other. And the settlement ariseth from the parish's giving that evidence of their being satisfied of his ability. *Str. 1022.*

M. 7 W. Talborn and Boston. If a man is taxed, and after taxation stays 40 days, it is no settlement unless he pay the tax. *2 Salk. 523.*

The publick taxes or levies] And though the rate be in form, or in the manner of making it, not strictly legal, but void; yet if the party be rated and pay to such a rate, he shall gain a settlement: for it would be hard, that one of the parish should come and say, that it was a void rate, being of their own making, and acquiesced under, and the money paid accordingly. *Vin. Settlement. K. 9. St Giles's Cripplegate and St Mary Newington.*

The publick taxes or levies of the said town or parish] By the *9 G. c. 7.* No person who shall be assessed to the scavenger's rate, or to the repairs of the highways, and shall duly pay the same, shall be deemed to be settled thereby. *s. 6.*

T. 9 An. Paying to the county bridge gains no settlement, for there all the county is liable, and he pays as one of the county, and not as an inhabitant of the parish or town where he lives. *Cases of S. 1.*

It hath been doubted, whether being assessed to and paying the land tax would gain a settlement. In the case of *Q.* and *St Michael's Cornhill, T. 9 An.* It was adjudged, that this was no settlement, because it is a county tax; so of a hundred, or any other county tax. *Vin. Settlement. K. 6.*

But in the case of *K. and Bramley* in the borough of *Leeds* in *Yorkshire, H. 9 G. 2.* Two justices make an order to remove *John Close*, from *Armley*, another township in the same borough, to *Bramley*, who appeal, and the sessions confirm the order, and state specially, that the said *John Close*, after his settlement in *Bramley*, removed with his family, and inhabited and farmed lands at *Armley*, for which he was charged and paid two quarterly payments to the land tax only. By the court; It is a good settlement, and the orders were quashed, *Seff. C. V. 2. 167.*

So in the case of *K. and Chidingfold, H. 30 G. 2.* It was moved to quash an order of sessions, not stating the case, but merely the question, Whether the tenant's paying the *land tax* (which was allowed to him again by his landlord) amounts to such a notice, as shall gain the tenant a settlement: Which the sessions held that it did not. In support of the motion, was cited the case of *K. and Oakehampton, E. 7 G. 2.* where a tide-waiter's being taxed to the land tax for his salary, was holden to be sufficient notice so as thereby to gain a settlement, even tho' it was paid by the collector. And the aforesaid case was cited of *K. and Bramley.* On shewing cause, the counsel on the other side acknowledged that they could not support the order; the point being already fully settled by former determinations. And the rule for quashing the order of sessions was made absolute. *Burrow. 247.*

Note, the case of a tide-waiter, or exciseman, or the like, is somewhat stronger than the common case between landlord and tenant. For the officer's tax easeth the rest of the inhabitants for so much in their assessment; and it is reasonable that he who contributes to the *parish stock*, should be intitled to receive relief from thence. But it is no advantage to the parish, that the tenant pays the tax, and not the landlord. The land tax, properly, is not an occupier's tax. It is chargeable upon the land. The tenant must pay, it is true; but he shall deduct it out of his rent. There is a proviso in the land tax acts, nevertheless, that this shall not vacate any agreement between landlord and tenant concerning the payment of the said tax. So that the justices in this case may take notice (as it seemeth) of such special agreement; and this consideration may make a difference, according to circumstances. For *prima facie* it doth not seem that the tenant in this case is charged with *his* share, but with his *landlord's* share, of the land tax. Whereas, in case of the *poor rate*, it may be said, that a private agreement between the landlord and tenant shall not alter the law; and the same being in its own nature an occupier's tax, the parish officers or justices cannot take notice of it otherwise. But even this, eventually, falls upon the landlord; for he will let his estate for so much the less upon that account.

By the 21 G. 2. c. 10. Persons assessed to and paying the duties on houses and windows, shall not thereby gain a settlement.—And the reason is obvious; because they do not thereby contribute any thing to the publick stock of the parish.

x. Of settlement by serving a parish office.

By the 13 & 14 C. 2. c. 12. Forty days inhabitancy shall gain a settlement: By the 17. 2. c. 17. Such 40 days are to be reckoned from the delivering of notice in writing? And by the 3 W. c. 11. they are to be reckoned from the publication of such notice in the church.

But if any person who shall come to inhabit in any town or parish, shall for himself, and on his own account, execute any publick annual office or charge in the said town or parish, during one whole year; he shall be adjudged to have a legal settlement in the same, though no such notice in writing be delivered and published. 3 W. c. 11. s. 6.

By the 9 & 10 W. c. 11. No person who shall come into any parish by certificate, shall be adjudged by any act whatsoever, to have procured a legal settlement in such parish, unless he shall really and bona fide take a lease of a tenement of the yearly value of 10 l. or shall execute some annual office in such parish, being legally placed in such office.

For himself and on his own account] Therefore a person sworn into and serving the office of constable, as deputy to another, doth not thereby gain a settlement. *Viner. Settle. G. 2. Lothsome and Sheriff Hales.*

Publick annual office or charge in the said town or parish] *H. 9 An. Gatten and Milwich.* A person being chosen parish clerk by the parson, served for several years, and received his fees and dues. By the court; It is a parish office, and has the care and custody of the ornaments of the church. 'Tis true, if he is poor, and has a family, they may remove him; for although he came in by the parson only, yet their not removing him implies their consent and approbation; and by this consent of theirs, the law adjudges him in by the concurrence of the parish. *Cases of S. 241. 2 Salk, 536. Foley 123.*

In the case of *St Mary and St Laurence in Reading*, it is said, the question was, Whether the being churchwarden for a borough, and serving that office for a year in the borough, which extends itself into several parishes, is such a service of an annual office as will gain a settlement? And by the whole court, it was held to be an office, the serving of which for one whole year, was sufficient to gain him a settlement in that parish within the borough in which he lived. *Foley 121.*

But in this report there must probably have been some mistake. A churchwarden is a parochial officer, and his office

office doth not extend into several parishes. Mr. *Viner*, in a manuscript note which he had of this case, says, the office is mentioned there to be *warden* of the borough (which is most likely) being in nature of a *tything man*, to execute the process of the justices of the borough. But he is not to execute his office in one parish only, but all over the borough. And it was doubted whether this was a settlement or not; because he was not elected into this office by the parish, neither was the exercise of his office confined to the parish; yet he is a publick officer, and his office is partly exercised within the parish, so that the parishioners must take notice of him. And by the court, It was held a good settlement, being within the express words of the statute of executing an office in a town or parish. *Vin. Settle. G. 3.*

H. 7 G. Bisham and Cook. The sessions setting out the fact specially, adjudge the settlement of a poor person to be at *Bisham*, because when he lived in that parish, he executed the office of *collector of the duties* given by the 6 & 7 *W. c. 6.* on *births and burials*. It was moved to quash it, because this was not a parish office, and it would be giving the commissioners (who are to appoint the collectors) a power to bring what charge they would upon the parish: besides, it was not stated in the order, that this was an annual office, as it must be to give a settlement, within the express words of the act. On the other hand was cited the abovesaid case of *St Mary and St Laurence in Reading*. And by the court, The reason why the executing offices gives a settlement without notice is, because of the notoriety of the thing, of which the parliament thought it impossible but the parish should have notice: can any thing be more notorious than this, which is to collect a duty from house to house? We cannot suppose a fraud in the commissioners, that they would appoint a person of no substance to be collector, only to bring a charge upon the parish. It needs not be a *parish office*, but a *publick annual office in the parish*. And as to its not being said, that this man executed it for a year, we must take it he did so, because it appears on looking into the statute, that the power given to the commissioners is to appoint a person who shall be collector of the duties for a year, and then give in his accounts. It hath been held a settlement in the case of the land tax, and why not in this? And the order was confirmed. *Str. 411. Foley 124.*

H. 2 G. St Trinity and Garfington. It was held, that a person who was chosen a *tythingman* for a year, and served

served that year, was such an officer as thereby gained a settlement, although he was not sworn into the office, until the half of the year was expired. *Foley* 123. *Cas. of S.* 72.

H. 9 *G.* *Burliscomb* and *Samford Peverell*. The sessions on a special order adjudge, that executing the office of *tythingman* would not gain a settlement: But by the court, The order must be quashed, for this is an annual office in the parish, within the words and meaning of the act. *Str.* 444.

H. 31 *G.* 2. *Cold Ashton* and *Woodchester*. There was a custom to serve the office of *tythingman*, for half a year only at a time. By lord *Mansfield* Ch. J. This cannot be an annual office, to gain a settlement.—In this case, the pauper had served the office of *tythingman* in *Cold Ashton* for half a year, and 20 years after for another half year. *Burrow.* 502.

Certificate, &c.] *E.* 8 *G.* 2. *St Maurice* and *St Mary Calendre* in *Winchester*. Upon a special order of sessions, it was held, that executing the office of *constable* in the city at large, gave a certificate man a settlement in that parish where he inhabited; though he was appointed by the corporation in general, and acted through all the parishes in the city; for he executes an annual office in the parish, which are the words of the statute. *Str.* 1014. *Seff. C. V.* 1. 315.

E. 8 *G.* 2. *K.* and *St Mary Berkhampstead*. The court seemed to be of opinion, that the executing the office of a *parish clerk* is sufficient for a certificate person to gain a settlement; for it is an *annual office* and more. *Seff. C. V.* 2. 182.

M. 17 *G.* 2. *Wingham* and *Selling*. It was stated in a special order, that a certificate man, having notice that he was appointed *borsholder*, never took the oath of office, but once executed a warrant of a justice directed to the *borsholder*. And this the sessions determined to be gaining a settlement within the 9 & 10 *W. c.* 11. But by the court, The order must be quashed, for the words of the act are, *being legally placed in such office*, that is, being the officer both *de facto* and *de jure*, which this man was not, the order stating negatively, that he was not legally placed therein, which can only be by an appointment and swearing in. *Str.* 1199.

E. 18 *G.* 2. *Sheepshead* and *Melborne*. A person was certificated from *Sheepshead* to *Melborne*, and staid there
ten

ten years, during which time the lady *Elizabeth Hastings* conveyed lands to trustees for several charities out of the profits, and amongst others, the sum of 10l. a year to the charity school at *Melborne*, to be paid to the vicar there for the time being. In a special order of sessions it was stated, that the certificate man officiated as schoolmaster several years, and received the 10l. a year from the vicar: and this the sessions held, gained him a settlement in *Melborne*, where they declare he had a freehold estate; and so had both the requisites to obtain a settlement to a certificate person, namely, a tenement of 10l. a year, and executing an annual office: But by the court, The order must be quashed: for it doth not appear how he came into this employment, and the legal right to receive the salary is in the vicar, who not caring to officiate himself, has therefore paid it over to this man as his deputy, which could never give any person a settlement, much less to a certificate man. *Str.* 1225.

Note, a *schoolmaster* is not legally placed in the office, till he hath subscribed before the bishop the declaration of conformity to the liturgy of the church of *England*, and is licensed by him: And by the 13 & 14 C. 2. c. 4. s. 10. if he shall execute the office without having so subscribed; he shall be utterly disabled, and *ipso facto* deprived thereof, and the same shall be void as if he were naturally dead.

But in the case of *Peak and Bourne*, *M.* 6 G. 2. it was adjudged, that the licence of the ordinary is not necessary for a *parish clerk*. *Str.* 942.

xi. Of settlement by renting 10l. a year.

By the 13 & 14 C. 2. c. 12. On complaint within 40 days after any person shall come to settle in any tenement under the yearly value of 10l. two justices may remove him to where he was last legally settled for 40 days.

By the 9 & 10 W. c. 11. No person who shall come into any parish by certificate, shall be adjudged by any act whatsoever to have gained a legal settlement in such parish, unless he shall really and bona fide take a lease of a tenement of the yearly value of 10l. or shall execute an annual office in such parish.

After any person shall come to settle] *E.* 29 G. 2. *Little Tew* and *Duns Tew*. *Richard Gustkins* the pauper and his family were removed by an order of two justices from *Little Tew* to *Duns Tew*. On appeal to the sessions, they confirm the order, and state it specially for the opinion of the

the court: *Richard Gustkins* was born in *Sandford*; and after, together with *John Goodwin* his father in law, rented a tenement at *Duns Tew* at 81l. a year, as partners, for 12 years. In 1747 they being about to leave *Duns Tew*, *John Goodwin* alone went to *Little Tew* to Mr. *Keck*'s agent, and took a farm at 52l. a year for four years; and after such taking, and before the farm was entered upon, *Richard Gustkins* asked *Goodwin* whether he depended on his going with him. He said, he did, for he could not go without him. They both removed from *Duns Tew* to *Little Tew*, with their whole joint stock, to the value of more than 100l. and managed the farm together for seven years, both of them residing thereon. Mr. *Keck* gave receipts to *Goodwin* alone; and once when Mr. *Keck* was obliged to distrain, he made the distress upon the stock which he supposed to be *Goodwin*'s only, and the pauper stood by without interposing, and *Goodwin* alone gave a bill of sale of the stock. At the end of seven years, just before the order of removal was made, *Gustkins* went off from the farm, and *Goodwin* took to the whole stock, and allowed the pauper 62l. for his moiety thereof.—By *Ryder Ch. J.* The question in this case depends partly on the construction of the statute of the 13 & 14 C. 2. and partly on the facts stated in this order. If a person comes into a tenement of the yearly value of 10l. although he should pay but 6l. a year, as if he pays a fine which will reduce it to 6l. a year, yet he will gain a settlement thereby. And if a person occupies a tenement, and pays the rent, the law implies a contract. A man who comes to live upon a tenement of the value of 10l. a year, is presumed *prima facie* not likely to become chargeable. Here *Goodwin* occupied with the pauper's stock; and upon the distress, a moiety of his stock was to be sold. *Denison J.* It is observable, the words of the act are, "After any person shall come to settle." Now there are two ways in which a person may come to settle; either as owner, or as tenant by way of contract amounting to a lease. And if the tenement is worth 10l. a year, though he doth not pay 5l. he gains a settlement. In the certificate act there is a provision, that he must rent 10l. a year: this is a parliamentary exposition. If one man rents a farm, he may make another by a private contract between them gain a settlement. And the reason always given is, that if a man can be intrusted with a farm of 10l. a year he is not likely to become chargeable. *Foster J.* There is sufficient stated here for the court to draw a conclusion, that there

there was a contract between them. It appears there was a joint occupation of the farm for almost seven years; and when they parted, they divided the stock. *Wilmot J.* It is objected, that the pauper was no party to the contract with the landlord, and that therefore the landlord is not apprised of his ability. But if a landlord was the only judge of ability in these cases, no settlement could be gained by a lease from a tenant. Yet if a man rents 100l. a year, he may settle nine others, by making leases of 10l. a year to each. The under lessee would be liable to two distresses. Now supposing the case to stand quite clear of fraud and collusion, where is the difference between those two persons holding together, and holding under one another? This is my opinion as at present advised; but as there may be great inconveniences by persons coming to live with others, it may be proper to take time to consider.—And afterwards, in the trinity term following, Mr. justice *Denison* delivered the opinion of the court, (*Ryder Ch. J.* being dead, and no new one appointed) that both orders should be quashed: for we are of opinion, that *Gustkins* did gain a settlement at *Little Tew*; for though *Goodwin* only took the farm, and *Gustkins* was not liable to the landlord for the rent, nor tenant to him, yet being taken in partner with *Goodwin*, he had an interest in the farm, and was at least tenant at will to *Goodwin* of a moiety, which was more than 10l. a year. And cited *Cranly* and *St Mary Guildford* (Str. 502.) and said, the reason of that case holds here: which was, where the lessee of a mill by a parol agreement, let the mill to another, who enjoyed it for two years, and it was adjudged, that this gained a settlement to that other, although he was a certificate man; being, if not an absolute lease, yet undoubtedly a lease at will, which was held by the court to be sufficient.

But where two persons jointly rent a tenement under the value of 20l. a year; it seemeth that this shall settle neither of them: because neither of them hath an interest in the farm to the value of 10l. a year.

Shall come to settle] For taking land in the parish, of whatever value it shall be, without coming to reside there, will not gain a settlement.

But if a man's family reside there, altho' perhaps he may not reside there himself, it shall be sufficient. As in the case of *K. and St. Margaret's Westminster*, M. 5 G. 2. Two justices remove *Elizabeth Conyers* from the parish of *St. Margaret's* to the parish of *Ludgate*. The sessions state the

the case specially, that *James Conyers*, father of the said *Elizabeth*, rented a house in *Ludgate* parish of 25l. a year, and paid to the rates of church and poor; but that he was a prisoner in the Fleet at the time he did so; and that *Elizabeth* gained no settlement for her self. Upon which the sessions adjudged that he gained no settlement by this. But the court quashed the order of sessions, and confirmed the order of the two justices. 2 *Barnardist.* 76.

In any tenement] Here it occurs to be considered, what shall be a *tenement* within this act, so as to gain a settlement. Concerning which it hath been adjudged as follows:

H. 10 An. Evelin and Rentcombe. An order was drawn up specially to have the opinion of the court, Whether renting of a *water mill* of 10l. a year, would make a settlement? And by the whole court clearly, a mill is a *tenement*, and the renting thereof must gain a settlement within the statute. 2 *Salk.* 536. That is, if the party lives therein, or within the parish.

T. 10 G. 2. Butley and Benhall. The question was, whether renting a *windmill* at 14l. a year, gained a settlement? it having been determined that a *watermill* did. It was said, those are always habitable, but the others often are not. But by the court, It is the same as if he had rented land of that value. *Seff. Cas. V. 1.* 320.

H. 12 G. Stone and Kniver. Upon a special order of sessions, it was stated, that a poor person rented a *coney warren* and a cottage upon it at 10l. a year, which the justices were of opinion did not gain him a settlement. But by the court, A *mill* hath been held to be a *tenement* within the statute, and why not this? It is his ability to pay 10l. a year, that is the foundation of the settlement; and whether he pays it for a house of habitation, or for a warren which brings him in a profit, is not material; the order of sessions must be quashed. *Str.* 678. *Seff. C. V. 2.* 109.

E. 3 G. 2. Minchin-hampton and Bisley. Order specially stated: A poor person rented, in the parish of *Bisley*, lands of the yearly value of 8l. from his father, an house of the yearly rent of 1l. 10s. from his uncle, and the same year took the *pasture eatage* of a piece of ground, in the said parish from *Michaelmas* to *Christmas*, and paid 12s. for the same, which piece of ground was worth 6l. a year. It was urged, that this was a good settlement, because during those three months the man was not removable. But in this case, the court held, that *taking the pasture of*

a piece of land was not more than taking the herbage, or than taking the common, which could not be esteemed part of a *tenement* within the meaning of the statute; but seemed to think, that if the words had been, that he had taken a *pasture ground* for three months, that would have made a good settlement. *Seff. C. V. 2. 132. Str. 874.*

H. 25 G. 2. Lockerley and Sherfield English. Two justices remove *Martha* the widow of *Richard Edwards* and her five children from *Lockerley* to *Sherfield*. On appeal, the sessions quash the order, and state the following case. *Richard Edwards* hired of one *John Marsh* a dairy of 16 cows at 3l. 5s. for each cow, and a messuage at 25s. a year in *Lockerley*. *Edwards* was to have the sale of the milk, and these cows were to be fed on *Marsh's* land. He was also to have the feeding of a pig, and the running of a horse for one year: All which he enjoyed accordingly.—*Mr. Hume Campbell* moved to quash the order of sessions, as this interest in a dairy was not sufficient to give a settlement; and cited the case of *Minchin-hampton and Bisley*. He insisted, that in the present case there was no agreement for a lease of the land, but a mere contract for the milk of the cows; that the pauper had only a profit arising from the cows, the property whereof was in the owner of the land.—And of this opinion was the court.—*Wright J.* (*Lee Ch. J.* being absent) said, that the word *dairy* did not seem to be any particular part of the farm; and that the word *tenement* is of large extent, and must be something that can be held, and relating to land, and must lie in tenure. What is let here, is the pasture and use of 16 cows; and the profit of them is the object of the agreement. If the pasture was let by the name of *pasture*, the interest in the close would pass (1 *Inst.* 4). But this is not the case here. For it is not the feeding of the close, nor for cattle in general, but only the feeding for these cows; and seems to be only an agreement for the use of the cows, and the owner of them to find meat. I cannot see any word in the agreement, which will pass an interest in the land, so as to be considered as a *tenement* within the statute.—*Denison J.* This is only a contract for a personal thing, and which is not a *tenement* within the words of the act. The letting 1000 sheep and lambs is no contract for any thing real. If the stock and land had been let together, and it had been stated that the land was worth 8l. a year; yet it would have been no settlement within the statute.—*Foster J.* was of the same opinion. He said it was a new case; but these bargains are

are very frequent in England; and he never had any doubt.—And the order of sessions was quashed.

As to the case, *Whether it shall be one intire tenement*; it hath been adjudged as follows:

M. 1 G. North-Nibley and Wotton under Edge. A person rented an alehouse at 5l. a year, at *Lady-day*, for a year; and in *May* following rented a piece of land for 6l. a year; held the same for two months; and ran away. It was held, that it was not necessary the messuage or tenement should be rented of one person; though it be rented of several, yet in him it is but one, and the statute is satisfied, he being of ability to be trusted with a tenement of 10l. a year. *Cases of S. 86. Sess. C. V. 1. 73. Fol. 79.*

Furthermore; It is to be considered, How far *the same tenement, but lying in different parishes*, shall gain a settlement: As to which it hath been adjudged as follows:

T. 3 G. South Sydenham and Lamerton. A person rented a tenement of 10l. a year, being one intire tenement, but lying in two parishes. The question was, *Whether this gained a settlement?* By the court; If the tenement be intire, though the lands be in different parishes, it seems to be a settlement in that parish where the house is; otherwise, where the tenements are distinct, and lie in different parishes, as if a tenement of 8l. lie in one parish, and a tenement of 3l. in another. *Str. 57. Sess. C. V. 1. 115. Foley 81.*

But the question in this case only was, *Whether one and the same tenement, and not whether two distinct tenements, of the yearly value of 10l. but lying in different parishes, shall gain a settlement*: So that the determination in this case, as to this latter point, was extrajudicial. And the reason given by the court in this case doth extend as well to different tenements, as to one intire tenement, *viz.* The mischief recited by the statute, and intended to be prevented, is the vagrancy of poor persons, who used to come into parishes where there was the best stock; and the statute describes who are intended by those poor, namely, such persons who are not capable of hiring a tenement of 10l. a year; now the man's sufficiency is not the less, because 6l. a year, part of the tenement, is in a different parish. There are considerable farmers who do not rent 10l. a year in any one parish, and it would be hard to adjudge that therefore they gain no settlement. *Str. 58. Foley 81.*

M. 3 G. 2. Elsted and Hollinbourn. The case was this: A person rented a tenement, consisting of a farm house and lands of 12l. 10s. a year; which house and lands laid contiguous, and had been usually letten together and occupied by the same person, but the house and so much of the land, as together amounted to 9l. a year, lay in one parish, and 3l. 10s. in another parish. By the court, This was held to be a settlement; on the authority of *South Sydenham and Lamerton*. *Seff. C. V. 2. 130. Str. 849.*

Further yet; It remains to be considered, how far *two distinct tenements, one being in one parish, and another being in another parish, shall be deemed a sufficient tenement within the act, whereby to gain a settlement*: For although in the case of *South Sydenham and Lamerton* afore-said, the court seemed to be of opinion that two such tenements would not gain a settlement; yet that (as hath been observed) was not the point in question. And in the case of *K. and Sandwich, T. 8 G. 2.* It was resolved as follows:

A person rented a tenement of 30s. a year in one parish, and then took a parcel of land of 12l. a year in another parish, and occupied that, and continued in possession, and lived upon the former tenement during that time. The court held, that thereby he gained a settlement in the parish where he lived. *Seff. C. V. 2. 166.*

And the same will appear further confirmed, when we come to speak of certificate persons gaining settlements by 10l. a year.

Under the yearly value of 10l.] If the tenement is under 10l. a year, the justices upon complaint within 40 days have power to remove the person coming there to reside; if it is not under 10l. a year, they have no power to remove him; and continuing unremovable for forty days, he thereby gains a settlement.

Upon which it is observable, that the payment of the rent can be no matter of consideration with regard to the settlement; for the settlement is obtained before the rent becomes due. For the settlement is not suspended, as in the case of a hired servant, until he hath ended his year; but so soon as he hath resided 40 days, he is settled without more; even as a servant hired for a year, became settled in 40 days, before the statute of 8 & 9 W. and as apprentices are still settled in 40 days, without any regard to serving out their time.

And it is observable, that the statute doth not say for what *time* he shall rent the tenement, but only of what value it shall be by the year. And in the case of *K. and Shenston, E. 32 G. 2.* A person took two tenements, which together amounted to more than 10l. a year, (the one being a tenement of 9l. a year, the other of 3l. 10s.) but he took them for less than a year, to wit, the tenement of 9l. a year he took for nine months, and the other piece of ground for six months. It appeared that he took them *bona fide*, and without any design of fraudulently obtaining a settlement in the parish. And it was adjudged that he gained a settlement thereby.

Of ten pounds] Upon these words the *value* of the tenement is considerable, or what shall be deemed a tenement of 10l. a year sufficient to gain a settlement. Concerning which it hath been adjudged as follows:

H. 13 G. 2. Southwold and Yokesford. A person took a house, and agreed to pay 10l. a year for it; and the landlord agreed to make new buildings. These improvements were never made, and the house worth but 6l. a year. By the court; The sessions must judge upon the facts; they have stated that the agreement was for 10l. a year; this is evidence of the value; but the justices have a right to inquire into the real value, and that is but 6l. a year, and there is no fact to shew this 10l. a year. Therefore adjudged, that this was no settlement. *Sess. C. V. 2. 198. Str. 1127.*

T. 3 G. South Sydenham and Lamerton. Order specially stated: A person took a lease of a tenement for 99 years, determinable on three lives, and paid his fine, and the rent reserved was but 7l. but the real value was 13l. By the court; The quantity of the rent is not material, but the value of the tenement. If there be a lease of lands worth 10l. a year, and a fine be paid, and 20s. only reserved, it makes a settlement; so if no fine be paid, or no rent reserved, yet if the tenement is worth 10l. a year, it makes a settlement: for the settlement depends on the value of the tenement, and not on the rent. *Sess. C. V. 2. 198. Str. 57.*

T. 14 G. 2. Kirton and Weston. Order specially stated: A person rented a tenement at 10l. a year, which had been let so for five years before; but the tenement had been usually let at 7l. a year, and when the said person was told it was too dear, he said he did it to gain a settlement; but the sessions did not adjudge it a fraud. Upon this it was urged, The consideration here must be, whether

ther upon the state of this case, he rented a tenement under the value of 10l. a year; for if not, it is a good settlement; for they said, they would not hold this to be fraudulent, it not being so adjudged, and evidence of fraud is not sufficient; and as to the value, they must take it to be according to the rent, unless the contrary was stated; for as it is a removal of a man from his farm, it should be shewn to be under value. *Sess. C. V. 2. 141. Str. 1156.*

Unless he (the certificate person) shall really and bona fide take a lease] *T. 9 G. K. and Little Dean.* It was stated, that a man took a lease for 7 years, and objected that it might be only by parol, and then it is void for the whole, and there can be no settlement. But by the court; Then it should have been stated to be by parol; we must take it to be by deed, otherwise it is no lease at all. And the order was confirmed. *Str. 555.*

H. 8 G. Cranly and St Mary Guilford. Upon a special order of sessions it was stated, that a certificate man agreed with the lessee of a mill, that he should occupy the mill, and pay 12l. a year; that there was no under lease or assignment, but in pursuance of that agreement the certificate man occupied the mill two years, and paid the rent. The sessions adjudged it no settlement. But by the court; The order must be quashed: for if this be not an absolute lease for a year (as *Eyre J.* said it was, the rent being reserved as rent for a year), yet it is undoubtedly a lease at will, which is sufficient to gain a settlement. *Str. 502.*

A lease of a tenement] *M. 9 G. St John's Hertford and Amwell.* A certificate man took a farm of 10l. a year, part of which was in *St John's*, and part in *Amwell*; but the greatest, together with the house, being stated to lie in the parish that received his certificate, the court held it a settlement there. *Str. 529. Cas. of S. 148.*

H. 8 G. 2. St Mary Calendre and St Thomas. It was said, that these acts have been liberally expounded, and that renting 10l. a year in different parishes will avoid a certificate. *Sess. C. V. 1. 315.*

E. 4 G. 2. Case of Stapleford in Leicestershire. A person took 3l. a year in the place he was certificated to, and 40l. a year in the next parish, but lived where the 3l. was; and it was held a settlement there. *Str. 849.*

Upon the whole, notwithstanding what hath been so often mentioned above, as to the supposed sufficiency of the

tenant to stock the tenement upon which he comes to reside, yet the statute takes no notice of that; and therefore, although it may be a good general reason to suppose that a person of such ability is not likely to become chargeable, yet such ability doth not seem to enter as any necessary ingredient into the settlement; and if the landlord will trust the tenant, it seemeth that the parish hath no remedy, unless the justices shall adjudge it a fraud. And in the case of *giving security* for the rent, it hath been determined as follows:

T. 10 G. 2. Butley and Benhall. A person rented a windmill at 14l. a year; but gave security for the rent: It was objected, that this was no settlement, for that the foundation thereof is the credit of the party, which fails in this case. But by the court, Giving security for the rent doth not alter the case; for he that has credit to give security, has credit to pay rent. *Seff. C. V. 1. 320. Andr. 3.*

And it may be observed upon this case, that it requires no great *ability* to stock a windmill.

xii. Of settlement by a person's own estate.

By the 13 & 14 C. 2. c. 12. *On complaint within 40 days after any person shall come to settle in any tenement under 10l. a year, two justices may remove him.*

And by the 9 & 10 W. c. 11. *No certificate person shall gain a settlement, but by renting 10l. a year, or executing an annual office.*

Upon which two statutes the following cases are considerable:

Person settled by
his own estate.

1. *How far a person, having an estate of his own, though under 10l. a year, shall gain a settlement thereby, within the said statute of the 13 & 14 C. 2.*

E. 11 An. Harrow and Edgware. A person settled at Harrow, went into the parish of Edgware, and purchased a copyhold estate for life, and lived therein 4 or 5 years, and died. And as this was a tenement under 10l. a year, the question was, upon the 13 & 14 C. 2. whether this gained him a settlement at Edgware? It was argued, that the statute hath been always held to mean an estate which a man takes to farm, and not an estate of his own; for if a person has a freehold, he cannot be removed from it, though not worth 10l. a year. And by *Parker Ch. J.* and the court; Where a person has an estate for life, or an estate of inheritance of his own, that gains him a settlement,

settlement, though less than 10l. a year; for he cannot be removed, and if he cannot be removed, he certainly gains a settlement. *Foley* 257.

E. 13 G. 2. Harsfield and Furley. On a special order of sessions, relating to the settlement of a boy of 8 years and a girl of 6, it was stated, that the mother of these children had an estate of 4l. a year in *Furley*, where she and her husband lived and had these children: that she dying, the husband became tenant by the curtesy; and whilst such, he took 30l. a year at *Harsfield*, and lived one year there with his two children, and then died: that the children being found with their grandmother at *Furley*, were both removed to *Harsfield*: which order the sessions confirmed. And now the court, upon argument, confirmed the orders as to the girl, but quashed them as to the boy. For as to the boy, he was tenant in fee of the 4l. a year. And though it was not stated, that he was actually upon that spot, yet it was enough, that he had such an estate in the parish, from which he could not be removed. But as to the daughter, it is otherwise; she could demand no maintenance out of her brother's estate: and it was never yet determined, that children should go to a grandmother for nurture. She may indeed be charged to contribute to their relief in the parish where they are settled. *Str.* 1131.

T. 7 G. 2. K. and Sandridge. *Thomas Perchin* by indenture demised to *Thomas Gates* the father, a cottage at 5s. a year, which was the full value, for 99 years. The lessee held it till his death, and devised it to *Thomas Gates* his son. And the question was, whether the son, as executor, being intitled to the term, shall gain a settlement by inhabiting in such cottage? By the court; Where a man lives upon his own, is a case of a very tender nature, and the law will not unsettle him: Persons to be removed under the statute of C. 2. are those that wander from place to place, and not those who live upon their own estate: And adjudged, that he gained a settlement. *Seff. C. V. 1. 200. Str.* 983.

E. 3 G. South Sydenham and Lamerton. A person possessed of a lease for years dies intestate; if the next of kin shall be said in law to be settled there, was the question: It was held not; he has only a right, which he must pursue by taking out letters of administration, and no right is vested in him till that is done. *Caf. of S.* 103.

T. 10 G. 2. Faringdon and Widworthy. The pauper settled at *Faringdon*, removed to *Widworthy*, and lived

there with his father in a cottage house of 30s. a year, working as a day labourer. The father died intestate, possessed of the said cottage for the residue of a term, determinable on lives, leaving the pauper and another son. The pauper's brother took his distributive share of his father's estate in goods, and the pauper himself, after the father's death, continued in the cottage for 5 or six years, until the lease was determined: After which, and since the making out the order for his removal, he took out administration to his father. And the sessions quashed the said order, adjudging him to be settled at *Widworthy*. But by the court, He had gained no settlement at *Widworthy* at the time of making the original order, because he then was plainly removable, as he had not taken out the administration. And quashed the order of sessions. *Andr. 4.*

M. 4 G. Mursley and Granborough. Sir *John Fortescue* demised a cottage of 30s. a year, to one *Eden* for 99 years reserving 12d. rent: *Eden* assigns the term to one *Gadden* in trust for his wife for life, and then in trust for his son, during the remainder of the term: The son dies, and leaves a wife, who as administratrix to her husband became intitled to this term, and she grants this cottage for 24 years, excepting two rooms, in which two rooms she lives, and marries one *John Chappel*. The question was, whether *Chappel*, as husband of an administratrix, who was intitled to the trust of a term only, and being intitled to a chattel in another's right only, was removable by the 13 & 14 C. 2. And by the court, he is not: this is not a taking of a tenement under 10l. for the 12d. is not reserved as a rent, but only an acknowledgment usually paid on long leases. The case of a copyhold is stronger than this, for that is but an estate at will. To strip the man of his own, is the way to make him chargeable, for he may not be able to let it. Therefore the orders which adjudged this to be no settlement were quashed. *Str. 97. Sess. C. V. 1. 122.*

M. 11 G. Ashbottle and Wyley. A poor man built a cottage, upon the waste belonging to my lord *Pembroke*, without his licence, who never offered to disturb the man in his possession, and he lived in this cottage for 30 years, and by his will left three guineas in the hands of his executors to purchase this cottage of my lord *Pembroke*. Upon his death, *Elizabeth* his only child, and heir at law, entered into the cottage, and after married one *Barrow*, and lived in the cottage, and were in quiet possession for three

three quarters of a year, and then sold it. The question was, whether the daughter, and her husband *Barrow*, had gained a settlement by virtue of this inhabitancy, in the parish of *Wyley*, in which their cottage was. Mr. *Reeve* argued, that this inhabitancy gained no settlement: The cottager was a disseisor, and had no right to build upon the waste, and was at any time removeable by the lord of the waste, and if he might have been removed within 40 days, his long possession shall give him no title; for he must only be considered as a tenant at will, and consequently his continuance upon the cottage, though never so long, could give him no settlement: and if the cottager had no right of settlement, none claiming under him shall be in a better condition. The statute of 31 *El.* prohibits the building of cottages, therefore the erection of one is unlawful, and shall have no privilege or encouragement. I admit if one inhabits by virtue of a lease, or other good title, for 40 days, he gains a settlement. But the inhabitancy in this case was without any good title, and consequently can gain no right of settlement. These objections were answered by the court, who held it clearly to be a good settlement. And though it was further objected, that the cottager himself was sensible he had no right, by his devising money for the purchase of a term under the lord of the waste, yet it was over-ruled. And by all the court it was held, that when a man hath such a possession as he cannot be removed from, and hath enjoyed that possession forty days, he thereby gains a settlement; and that is the reason why a copyholder or lessee for years gains a settlement by an inhabitancy for 40 days; for in those cases, the justices of the peace cannot determine his right: this present case is very strong; for the 30 years possession of the cottager, without interruption, would have been a good title in an ejectment; and for that reason the justices of the peace cannot determine his title. It appears upon the face of the order, that the cottager had a good title in ejectment, and in any case but in a real action. Lord Ch. J. *Raymond* said, he had known recoveries upon a 20 years quiet possession, and 20 years possession is a title to a plaintiff in ejectment as well as to a defendant. After so long a possession as this, it shall be presumed that the cottager had a licence to erect the cottage; but this case goes further, for besides the 30 years quiet possession of the cottage, here is a descent cast upon the daughter who was heir to the cottager, and *prima facie* it is an inheritance in the daughter, and an

estate by disseisin is in law a good estate, and a fee simple, till it be defeated. Wherefore all the court held, that the justices had no jurisdiction in this case; for they could not examine into the title to the land. And the settlement in the parish of *Wyley* was adjudged to be good. *Sess. G. V. 2. 115. Str. 608.*

Purchase under
30 l.

2. That a purchase under the value of 30 l. shall not gain a settlement.

By the 9 G. c. 7. After March 25, 1723, No person shall be deemed to acquire any settlement in any parish or place, by virtue of any purchase of any estate or interest in such parish or place, whereof the consideration for such purchase doth not amount to the sum of 30 l. bona fide paid, for any longer or further time, than such person shall inhabit in such estate, and shall then be liable to be removed to such parish or place, where he was last legally settled before the said purchase and inhabitan-
cy therein.

No person] And as this shall not settle the person purchasing for longer time than he continues in the purchased estate, so it shall not settle any of his children, by any derivative settlement from him, or continuing with him thereupon for 40 days unremovable. As in the case of *Salford* and *Over Norton*, H. 4 G. 3. *Peter White*, the father of the pauper, being settled in *Over Norton*, in 1726, for 29 l. consideration money, purchased a tenement in *Salford*, of *John Lardner*, whose wife was seised in fee of the said tenement, but never joined with her husband in the conveyance. *John Lardner* died 30 years ago; his wife survived him 10 years. The pauper's father lived in the tenement from the time of the purchase to this time. The pauper was born there in 1728, and lived with his father till within 8 years last past, when he married, left his father's family, and lived in a separate tenement in *Salford*, but never gained any settlement but what he derived from his father. Lord *Mansfield* Ch. J. delivered the resolution of the court; that no settlement was gained by the father of the pauper by virtue of the purchase, which in this case would have been the same if the statute of the 9 G. had never been made. It was only temporary, and did not extinguish the settlement at *Over Norton*. And having no settlement there himself, being barely irremovable, his son could derive none from him.

By virtue of any purchase] T. 30 & 31 G. 2. *Uffculme* and *St Sidwell's*. *John Hine*, the pauper, purchased a tenement in *St Sidwell's*, for 12 l. He lived there, with his

his family; and was rated to the land tax and to the poor rate, thus, "Occupier, late widow *Hooper's*, now *John Hine's* tenement." He paid the rates. Afterwards, he sold the said tenement, and went, with his family, to the parish of *Uffculme*; from whence they were removed to the parish of *St Sidwell*. The sessions, being of opinion, that the said *John Hine* did not gain a settlement in *St Sidwell's* by being rated and paying as aforesaid, the consideration of the said purchase being under 30l. did therefore vacate the said order. It was moved to quash the order of sessions. Lord *Mansfield* Ch. J. delivered the resolution of the court. It will first be necessary to consider, how the law stood before the making of the statute of the 9 G. Now before that act, no man was removable from his own; be the value of the purchase of it never so small and inconsiderable. And there were then other ways also of gaining settlements, as by serving a publick annual office, and being charged with and paying a share towards the publick taxes or levies and burdens of the parish. But this act was levelled only against fraudulent purchases of small value, made in order to gain settlements. And it declares, that purchases of less than 30l. value, *bona fide* paid, shall not gain a settlement for any longer time than the inhabitancy thereupon shall continue. After which, the purchaser shall be liable to be removed to his former legal settlement, prior to such purchase and inhabitancy upon it. And the established construction of this act hath been, pursuant to the intention of the legislature, to prevent fraudulent purchases. And therefore it hath been considered not to extend to what are called purchases in law, as devises, or other such methods of coming to estates; because they are not fraudulent. Whereas the present settlement is claimed, by being rated and having paid towards the publick taxes of the parish: Which is quite a different method of gaining a settlement. The man himself is here personally rated. The tax is laid upon a tenement, "late *Hooper's*, now *John Hine's*." But if he had been only rated as *occupier*, without adding his name, yet surely that would imply notice of the man's being an inhabitant. And we are all clear, that this act only means to put a negative upon a person's gaining a settlement by making a small purchase, with a fraudulent intention to gain a settlement thereby, in the parish where such purchase is made; and that it doth not affect any other method of gaining a settlement. And indeed it is but reasonable, that persons who have been rated and have paid towards the publick taxes and levies of a parish, should receive

receive assistance from that parish, when they become necessitous themselves. And the order of sessions was quashed; and the order of the two justices affirmed. *Burrow*, 368.

Purchase] *H. 3 G. 2. K. and Sawbridgeworth*. A father made a surrender of a copyhold estate, lying in the parish of *Sawbridgeworth*, of the value of 25s. a year, to the use of his eldest son and his heirs; upon which the son went and lived there. The two justices adjudge this to be no settlement, being not such a purchase as the act intended, for 30l. *bona fide* paid. The sessions confirm the order of the two justices. It was moved to quash these orders; and it was insisted, that this case was not within the act, being a voluntary provision in consideration of natural love and affection. And if this land had descended to the son, it is clear it would have gained him a settlement; and the present case is not much different. But the court said, that the intent of this statute was, to prevent persons gaining settlements who were any ways likely to be chargeable; and therefore provided, that they should be able to lay out 30l. in a purchase. They said therefore, that the intent of the parliament must be, to prevent persons gaining a settlement, merely by a voluntary gift of land under that value. And they confirmed both the orders. 1 *Barnardist*. 297.

And in the case of *Marwood and Kentishbury*, *H. 29 G. 2*. On motion by Mr. *Cox* to quash an order of two justices, and an order of sessions confirming the same, for the removal of *Thomas C.* the pauper and *Mary* his wife from *Kentishbury* to *Marwood*. The case was; they had been removed before, by an order of two justices, from *Kentishbury* to *Marwood*, which order was not appealed against. Afterwards, the father of *Mary* the pauper's wife, being possessed of the residue of a term of 99 years determinable on three lives, in a certain cottage in *Kentishbury*, the purchase money whereof was about 20l. made a conveyance of part of the said cottage, in consideration of natural love and affection, to the said daughter, for the remainder of the said term, if she should so long live. The said daughter, and her husband the pauper, came and resided in the said cottage during the remainder of the term; but, at the end of the term, were removed by order of two justices, from *Kentishbury* to *Marwood*; and, on appeal to the sessions, this order was confirmed; the justices being of opinion they gained no settlement by their residence at *Kentishbury*.—Mr. *Gould*,

on shewing cause, cited 2 Salk. 524. *Riseliſ* and *Harrow*. *Strange* 97, 163, 608. *Murfley* and *Granborough*. *Burclear* and *Eastwoodhay*. *Aſhbrittle* and *Wyley*. The queſtion was; Whether, on the ſtate of the caſe, the purchaſe by the daughter was ſuch a purchaſe as came within the purview of the 9 G. c. 7. and Mr. *Gould* argued, that the original conſideration money in this caſe not being 30l. nor any conſideration paid on the ſubſequent conveyance to the daughter, it was ſuch a purchaſe as the ſtatute intended ſhould not gain a ſettlement. And he ſaid alſo, that no caſe having been determined ſince this ſtatute, where a *deviſe* of an eſtate leſs than the value required by the ſtatute had been held to give a ſettlement, he was authorized to infer that ſuch a *deviſe* would not give a ſettlement by reſidence on the eſtate. Neither would this therefore, which was a conveyance for natural love and affection, without any pecuniary conſideration at all, be ſufficient to obtain a ſettlement. For the words of the ſtatute are, that no ſettlement ſhall be gained by purchaſe of a tenement, whereof the conſideration does not amount to 30l. *bona fide* paid, longer than the perſon ſhall reſide on ſuch tenement.—Mr. *Cox*, on the other ſide, ſaid, that the intention of the legiſlature was not to extend the law to every kind of purchaſe, according to the extenſive legal ſenſe of it, as Mr. *Gould* contended; but that where a man came into a pariſh, and made a purchaſe, he ſhould not gain a ſettlement from it, unleſs 30l. was *bona fide* paid for it. The very words import, that it was to be a pecuniary purchaſe, or where an equivalent is paid for an eſtate, and not where a man comes to an eſtate by will, donation, ſettlement on marriage, or the like. He cited *Bacon's Abr. Tit. Pariſts*. 796. *Roper* and *Ratcliff*; for the conſtruction of the word *purchaſe*. But, if the word purchaſe be to be taken in that extenſive legal ſenſe; yet there is a difference in the preſent caſe: and the true queſtion will be, what eſtate the *huſband* had; for if the huſband did not take by purchaſe, it will be of no conſequence how the wife took; becauſe he will gain a ſettlement by the inhabitancy, and ſhe cannot be ſeparated from him. But he is in by act of law, in the right of his wife; and not by any act, conſent, or traffick of his own, (*Hob.* 203.) and therefore cannot be removabſe from his freehold. There is a diſtinct and very different eſtate in the huſband, from what the wife had by the conveyance; as the eſtate veſts in him by mere operation of law: (1 *Inſt.* 300. a.) If therefore the daughter be in
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by purchase within the intent of the statute, yet the husband is not. The case of *devise* is not within the statute. (*Str.* 97. *Murley and Granborough*).—*Gould* in reply: As to the estate vesting in the husband by operation of law, he said, that *Hob.* 203. made for them, and proved that the husband's assent was necessary to vest the estate, and therefore that it could vest only in the manner it was conveyed, to wit, as by purchase.—*Ryder Ch. J.* If I had had any doubt, I would not give an opinion now. The statute certainly meant to prevent fraudulent conveyances on purpose to get settlements; and therefore does not take away the right of living on a man's own, be it ever so small; but only enacts, that if the purchase be under 30*l.* *bona fide* paid, he shall gain a settlement for no longer time than he resides thereon. A question has been made at the bar, of the word *purchase* in the statute, whether it is to be taken in the extensive legal sense of the word, or according to the common sense of purchase for a pecuniary consideration. And I have no doubt at all, from the intent of the legislature, but it must mean the latter. It is not stated in this case, that any consideration at all was paid, either by wife or husband; and I cannot think that purchases for natural love and affection (as this is) were intended or can be construed to be within the statute.—*Denison J.* All the cases that I remember since the statute, were cases of fraudulent purchases, made purposely to gain a settlement. And I think the intent of the statute was only to prevent such purchases. Therefore the statute did not extend to devises, gifts, or conveyances for natural love and affection; which still remain in the same light as estates by descent. As to the distinction of his coming in by act of law, I doubt whether that will hold, but give no opinion. Suppose a woman makes a purchase of 10*l.* value, and marries; the husband is in by act of law, but I will not say it would alter it, or make it not a purchase.—*Foster J.* of the same opinion.—*Wilmot J.* There are two meanings of the word *purchase*; the legal sense, and the common acceptation thereof. I think it means purchases for money, and not devises, gifts, or the like. The case of *Roper and Ratcliff* was determined on a political consideration; the legislature meaning to restrain the purchases by papists. But here the legislature meant the contrary, to restrain fraudulent purchases for small sums of money. It is absurd to say, that the statute meant any thing else: for then no settlement could ever be gained by any family conveyance,

conveyance, or by any settlement or gift upon a marriage.
—Therefore, by the court, let the orders be quashed.

The sum of 30l. bona fide paid] *E. 13 G. St Paul's Walden and Kempston.* There was a special order stated at sessions. A person purchased a copyhold tenement in *St Paul's Walden*; which with the fine, and fees paid to the court, amounted to 30 l. and it appeared by the same order, that the officers of the parish of *Kempston* had given him 40s. towards paying his fine and fees. Therefore it was insisted, that this was fraudulent, and not a good purchase within the statute, sufficient to gain a settlement. But by the whole court; we cannot take notice of its being fraudulent, unless the justices had adjudged it so. And the order was confirmed. *Foley 238.*

E. 8 G. 2. Tedford and Waddington. On a special order of sessions it was stated, that *Francis Gill* contracted for the purchase of a house in *Waddington*, for 39l. and paid 9l. out of his own money, and the remaining 30l. was by his order paid by another person, to whom the premises were mortgaged for it; that he had lived upon it four years, when the mortgage was foreclosed, and he turned out: and the question being, whether he had gained a settlement hereby, the sessions adjudge that this was a fraudulent purchase, and consequently no settlement gained thereby. But by the court, The order must be quashed: the purchase money by the statute need only be 30 l. and the advancing the money by another, makes no alteration. And the fact being specially stated, we can judge as well as the sessions, whether it be fraudulent or not. The circumstance of his continuing four years, ousts all presumption of fraud. *Str. 1014. Sess. C. V. 2. 164.*

H. 15 G. 2. Cotleigh and Stokeland. An acre in *Cotleigh*, wherein a person had a lease for lives, was mortgaged to the pauper for 15l. When the mortgagor died, there was two years interest due to the pauper, and he also owed 18l. 10s. to the pauper by bond and simple contract. And it was agreed between the widow and the pauper, that he should administer, and take all but the household goods; which he did. And the sessions having held, that his taking to this acre, and living on it 8 years, did not gain a settlement under the act, which requires a *bona fide* payment of the 30l. the court now quashed the order, it being to all intents of law and equity the same as actual payment of the consideration money. *Str. 1162.*

3. That

Person not removable from his own.

3. That a person may not be removed from his own, altho' not settled thereby.

M. 30 G. 2. *Aythrop Rooding* and *White Rooding*. Two justices by an order, reciting that *Susanna Gates* and her four children, the eldest of whom *Robert* was 9 years old, the second *William* 7 years old, and the third and fourth under 7 years old, have intruded into the parish of *Aythrop Rooding*, remove them to *White Rooding*. On appeal, the sessions state this case for the opinion of the court: That *William Gates*, the husband of *Susanna Gates* the pauper, ran away from his habitation; that his wife then went and resided upon a copyhold of her husband's, but where her husband had never resided; from which, being removed by order of two justices, the sessions quashed that order. It was moved to quash the sessions order. Mr *Norton* on the other side, agreed that a wife during the coverture cannot alter her settlement, though her husband is absent; but said, that this rule could not be applied to the present case; for it is one thing to say, that a person may not be removed, and another, that she does not gain a settlement. There was no resolution in the case of *K. and St Mary Berkhamstead*. Every man has a right to continue upon his own estate, let it be of ever so small a value. The husband in this case would have been irremovable; why should the wife be less so?—For this reason only, that it would be gaining a new settlement distinct from her husband. But the settlement was suspended *pro tempore* while she continued upon her own estate. And this is usual, for a settlement to be suspended. Persons serving his majesty gain no settlement, though they continue ever so long in a parish; their settlement is suspended. No resolution has ever said, that if a man makes a purchase under 10 l. a year, or under the value of 30 l. he may be removed. Sir *Richard Lloyd* on the contrary: The husband could not gain a settlement by an estate without residence, and it would have been absurd if he could; for then one by having 5 cottages, might have 5 different settlements at the same time. The statute of the 9 G. was made, because it was common for parish officers to give a poor man 4 or 5 l. to go and buy a cottage in another parish, that they might get rid of him.—Lord *Mansfield* Ch. J. There is no determination upon this, and therefore it must be determined upon the reason of the law. The husband, if he had resided 40 days upon this estate, would have gained a settlement, and most certainly is irremovable; for the preamble of

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the 13 & 14 C. 2. shews, he is not such a person as the statute meant, nor does he come within the description of it. Then the only question is, whether the wife is removable, (for nothing appears by which we can take it that she went against the consent of her husband;) and the same reason holds why she should not be removed, unless the husband thinks fit she should reside somewhere else. This order is founded on her being likely to become chargeable; whether she might be removed if actually chargeable, would be another question. There is no suspension here, nor in the case of a soldier: he is resident in a parish with another view, and for another purpose.—Mr justice *Denison*: There is a great difference between gaining a settlement and being irremovable, and they are not convertible terms. I always understood, that no persons can be removed from their own estate, whatever it be, freehold or copyhold, because it is not within the meaning of the act of the 13 & 14 C. 2. *Aythrop Rooding* could not be hurt; they are not bound to maintain her. If she is poor, she must go to her husband's parish *White Rooding* or starve. Though there is no case, yet the reason of the thing founded upon other cases which have been determined shews that she could not be removed.—Mr justice *Foster*: A wife has a natural right to go and reside upon her husband's estate. If she had gone against her husband's consent, that would have made an alteration. A man's right of residing upon his estate is founded on *magna charta*, which says, that a man shall not be disseised of his freehold. As to letting the pauper starve, I cannot agree in that; the parish where he is must take care he does not starve. It doth not appear that the child of 9 years of age had gained any settlement of its own; and therefore, as the wife is the head of the family in the husband's absence, the children have a right to continue with her, though above 7 years old.—And the order of the two justices was quashed, and the order of sessions affirmed.

4. *How far a certificate person shall gain a settlement by an estate of his own, notwithstanding the abovesaid statute of the 9 & 10 W.* Whether a certificate person may gain a settlement by residing on his own estate.

E. 5 G. *Burclear* and *Eastwoodhay*. *Abraham Hackett* comes with a certificate into the parish of *Eastwoodhay*, and afterwards marries one *Sarah Smith*. Her father surrenders to her a copyhold estate of 20 s. a year, and so the husband had it in her right. By the court; The man has gained a settlement in *Eastwoodhay*; for a man cannot

be

be turned out of his own, be it never so small. And by *Fortescue J.* the party here could not be removed: and not removable, and gaining a settlement, are the same thing. Then it was objected, that the person being a certificate person, he gains no settlement, unless he rents a tenement of 10*l.* a year, or exerciseth an annual office; and that statute being an explanatory act, is not itself to be explained, and consequently cannot be taken farther than the words. But by the court, This is not an explanatory act, but a new law, and must therefore receive a liberal construction. The exceptions in the statute prove this case, being a case more reasonable, than either that are there mentioned; and the parliament never intended to put a certificate man in a worse condition than another person. *Caf. of S. 121. Str. 163.*

[Note, where it is said all along throughout this course of settlements, that a person not removable for 40 days thereby gains a settlement; this is to be understood with respect to the particular instance only then spoken of: for it is by no means universally true, that every person who resides 40 days unremovable doth become thereby legally settled. A *servant* not removable for 40 days, gains no settlement unless he serves out his year: a *bastard* with its mother for nurture for 40 days, doth not thereby acquire any new settlement; so a *wife* residing upon the husband's estate: so a *certificate person*, or one residing on a *purchase under the value of 30*l.** and not actually chargeable, though they are irremovable, yet by such residence they acquire no settlement. And so in the case of *soldiers*; *servants falling sick* upon the road; *mariners wind-bound* in the port; and other such like.]

H. 31 G. 2. Cold Ashton and Woodchester. Case stated for the opinion of the court: In *July 1725*, *Daniel Harrison* and *Mary* his wife, and *William* their son, went with a certificate from *Woodchester* to *Cold Ashton*. They all lived in the parish of *Cold Ashton* from *July 1725*, till about *Christmas 1728*, at which time *William Fido* the father of the said *Mary* died intestate, leaving the said *Mary* his daughter and five other children, and being at the time of his death possessed of and intitled to a tenement and two acres and an half of land of the yearly value of 6*l.* 17*s.* situate and lying in the parish of *Cold Ashton*, for the remainder of a term of 99 years, determinable on the death of himself and the said *Mary* his daughter. Upon the death of *William Fido*, *Daniel Harrison* and *Mary* his wife and *William* their son, who was then about five years old,

old, entered upon and took possession of the said tenement and land, and *Daniel Harrison* and *Mary* his wife have lived in and occupied the same ever since, till the removal by the order now appealed against. But no administration of the goods or personal effects of *William Fido* was ever granted to the said *Daniel Harrison* and *Mary* his wife, or either of them, or to any other person. *William Harrison* lived with his parents *Daniel* and *Mary Harrison* in the said tenement till about 1748, when he married the pauper *Mary* (by whom he had the four children removed); and after his marriage, he and his wife *Mary* lived in the parish of *Cold Ashton* separate and apart from the said *Daniel Harrison*, until the time of the death of the said *William*, which was in the year 1755. *Mary* the widow of *William Harrison*, and her four children, having after the death of the said *William*, become actually chargeable to the parish of *Cold Ashton*, were removed by order of two justices to *Woodchester* which had granted the certificate. Upon appeal, the sessions quashed the order, and stated the above case; which being removed by *certiorari*, it was moved that the order of sessions might be quashed. There were two questions, 1. Whether *Daniel Harrison* the father acquired any settlement different from that to which he was intitled by the certificate? 2. Whether if so, the son gained a derivative one?—

Lord *Mansfield* Ch. J. As to the first question, the case of a certificate man's gaining a settlement by residing on his own estate, is precisely the same as that of a common person not under a certificate, and arises by construction; for it is not within the words of the 8 & 9 *W.* which speaks only of serving an annual office, and renting 10 l. a year. But residing on a man's own estate, was considered as a stronger case than the casual property acquired by renting, because he has a settlement on the statute of the 13 & 14 *C.* 2. not by the words, but on the principle that he cannot be removed. This construction being made upon the reason, gives a greater latitude to the principle on which the construction is founded; and therefore a man who resides on his own estate, though of ever so small a value, is irremovable: And this holds equally in the case of a certificate person, who gains a settlement, if after he comes in by certificate, he is under such circumstances as by his property he cannot be removed. Whether in this case *Daniel Harrison* had such a property in this leasehold estate, when he first entered upon it, is a question that need not now be determined. What I

ground my opinion upon is, that he has acquired by the length of possession such a right as he was not removable from. For the statute of limitations doth not operate by way of barring the remedy only, but it gives a right. He may bring an ejectment after 20 years possession; and no person could have recovered against him, because such person was out of possession all the time. I except the case of landlord and tenant; for there, the possession of the tenant is that of the landlord. This possession gives a title, from which the parish officers could not remove him, nor the next of kin. In the case cited, *Faringdon and Widworthy*, they had been satisfied their shares; and here, if they have not controverted it for such a length of time, it is to be supposed they have given up that right. If the case had turned on the general question, whether the next of kin gains a settlement without administration, I should have desired time to consider of it and the cases cited. There is a material difference between the party's being sole next of kin, and where in common with others, as in this case; for where one is the sole next of kin, he has the undoubted right to administration. In general, it is of more consequence, that the law with regard to the poor's settlements should be certain, than what the determination is as to the particular case in question. As to the second point, of a derivative settlement to the son;—the word *emancipation* is a loose term in our law, especially in the matter of settlements, and is used in the books without affixing any precise idea. Indeed it is a term borrowed from another law, and not properly applicable to ours. The rule I take to be this: Children are intitled to the settlement of their father, till they have acquired another. As to the distinction made at the bar, that the son shall not derive a new settlement from his father, because it was acquired by the father himself after the son had left him; this might be material were the fact so, but it is not stated here to say that was the case, or that he left his father so as to change his derivative settlement. It is stated, that he lived 20 years with his father in this tenement, or at least very near it, and we cannot intend that he did not.—Mr justice *Denison* was of the same opinion, (Mr justice *Foster* being absent.)—Mr justice *Wilnot*: As to the father; I do not think it material to say any thing about the administration. Had the case turned upon that, it would have deserved consideration. If it be a matter already settled, I shall be for adhering to the rule (*Stare decisis*), which is a right rule, and more especially in the poor law.—Possession by wrong gives

gives a title upon an ejectment against the legal owner. Here is a legal title without administration: After such a length of possession, one would be inclined to presume as much as possible. Now here it is possible that *Daniel Harrison* and his wife might have some grant or assignment from *William Fido* in his life time; or some other regular and rightful title to the possession which they took of this tenement. So that their possession might possibly have been a rightful one.—It would be too nice to be computing days, to see whether the son was with his father a day over or under 20 years.—And the order of sessions was affirmed.

H. 16 G. 2. K. and Stansfield. If an estate descends to a certificate person, it gains him a settlement, because it is by operation of law, and not by an act of his own; and as the statute hath been laid open in cases of descents, it ought to be so in cases of purchases. And by *Lee Ch. J.* the statute of the 8 & 9 *W.* hath received a liberal construction; and hath been held to gain a settlement, both in descents, and devises, and purchases. On the 13 & 14 *C. 2.* the construction has been, that let the value be what it will, a person cannot be removed from his own; and it seems to be the same upon the certificate act, for if he is not removable within the 13 & 14 *C. 2.* he is not removable on the certificate act. *Sess. C. V. 1. 316.*

T. 16 G. 2. Deddington and Dunfrew. A certificate man purchased a house for 42*l.* lived in it many years, then sold it, and becoming chargeable was sent back. It was insisted, that the 9 & 10 *W. c. 11.* saying, a certificate man shall gain a settlement by no act whatsoever, unless the taking 10*l.* a year, or serving an annual office, this man, notwithstanding the purchase, might be sent back: and it was said to differ from the case of *Burclear and Eastwood-bay*, where the surrender of a cophold to the certificate man's wife was held to gain him a settlement; because there it was not his own act (as this purchase is) but it came to him by operation of the law. But the court did not think this a sufficient distinction, and said a purchase was in its nature an excepted case; and his selling it afterwards made no alteration. *Str. 1193.*

H. 6 G. Ivinghoe and Stonebridge. A certificate man made a purchase in *Stonebridge*, and his apprentice lived with him for above 40 days upon the purchased estate there: And by the court, the apprentice thereby gained a settlement; for when a certificate man maketh a purchase, he immediately ceaseth to be there in nature of a certifi-

cate man, and becomes a settled inhabitant, and consequently his apprentice with him. *Str.* 266.

Residence necessary.

5. *How far residence upon a man's own estate is necessary to gain him a settlement.*

H. 8 W. Riselip and Harrow. By Holt Ch. J. Having land in a parish will not make a settlement, but living in a parish where one has land, will gain a settlement without notice; for the act never meant to banish men from the enjoyment of their own lands. 2 *Salk.* 524.

M. 8 G. Wokey and Hinton Blewet. A person settled at *Hinton Blewet*, had an estate descended to him in *Wokey*; whereupon the justices send him thither as to the place of his last settlement. But by the court, The order must be quashed; for it is no settlement nor inhabitation, though if he should go thither he could not be removed: it may be a great injury to send him away from a good trade at *Hinton Blewet*, to perhaps half an acre of land, wherein he has but a term. *Str.* 476.

M. 25 G. 2. Baddow and West Shefford. John Bird came into *West Shefford* with a certificate from *Baddow*. During his stay at *West Shefford*, he became beneficially intitled to a leasehold estate of 14l. a year there, determinable upon his own life. Upon which he entered on Nov. 17. and continued in possession till the 15th of December following, being 28 days only, when he died. Two justices removed his widow and family to *Baddow*. On appeal to the sessions, the order was reversed. And both orders being removed into the king's bench by certiorari, it was moved to quash the order of sessions. And on shewing cause, the court was clearly of opinion, that in all cases, whether of ownership of land, or renting 10l. a year, a residence of 40 days is necessary. And the order of sessions was quashed.

E. 8 G. 2. K. and St Mary Berkhamstead. The husband ran away, and it was not known whether he was alive or dead; in the mean time the wife had a house devised to her in *Northchurch*, and she and her children went to live there. The question was, Whether by continuing there in 40 days, they gained a settlement; The court seemed to be of opinion, since it was not known that the husband was dead, he must be supposed to be alive, and in that case that the wife could not gain a settlement for herself, but must follow the husband's settlement; and that the husband having not resided 40 days at *Northchurch*, in the said house unremovable, he hath gained no settlement there. *Seff. C. V. 2.* 182.

But

But residence upon the *same estate* is not necessary, provided the residence be within the parish. As in the case of *Souton* and *Sidbury*, *M. 12 G. 2.* A person who lived with his family at *Souton*, having an estate at *Sidbury*, which the tenant gave up, went thither, and lodged in an alehouse as a guest, without having any certain room there, and staid from *November* till *April*, but sometimes went to *Souton*, where his children and family were, and to other places as his occasions required, possessed and managed his estate, by repairing fences, hoeing turnips, and the like. The question was, whether such inhabiting, and not upon the estate, would gain a settlement? And the court were of opinion it would, and that it made no difference whether it were in his own house or in an alehouse; for being in the same parish, he could not be removed. *Seff. C. V. 2. 150. Viner. Settle. D. 12.*

Also it is not necessary that such residence should be for 40 days together. Thus in the same case of *Souton* and *Sidbury*, the question was moved, Whether, since he did not reside there for 40 days together, but for more than 40 days in the whole, such residence should gain a settlement? And by the whole court; it is not necessary upon the statute, that the residence should be 40 days successively. *Seff. C. V. 2. 150. Andr. 345. Vin. Settle. D. 12.*

And, *T. 13 G. 2. St Neot's and St Clere.* A person at *St Neot's* was hired and served a year; and then he returned to *St Clere*, where he had a joint freehold with his mother, and lived there backwards and forwards, but not 40 days at a time, but more in the whole, and afterwards sold the same. The question was, Whether here was any settlement at *St Clere*? By the court; This depends on the statute of the 13 & 14 C. 2. and 40 days inhabitancy together is not requisite, and the man was well settled at *St Clere*, for there was a time, when by residence of 40 days he could not be removed from thence. *Seff. C. V. 1. 318. Str. 1116.*

AND now upon the whole, having gone through this Conclusion; subject of settlements, and I hope with some perspicuity and exactness; the first reflection which will arise in the mind of every reader, I think, will be, to admire the subtilty of human wit. It was the observation of a wise king of *Israel* long ago, that God made man upright, but they have sought out many inventions. A stranger to

our laws would not readily conjecture, how many doubts and knotty difficulties have been formed upon the construction of one short act of parliament, and one single clause of that one short act, and which upon the face of it doth not appear to carry any considerable difficulty.

The next thing that occurs, is to reverence the wisdom of the court of king's bench; in clearing up those difficulties, and establishing the sense of the law upon solid and firm grounds: Whose determinations, although they are not a law in themselves, yet they are the best and surest exposition of the law; being made by persons of distinguished abilities, educated and exercised in the profession of the law, after argument by able counsel. Which advantages are not to be expected at a quarter sessions; or, in a much inferior degree. So that the law seems generally to be now well settled as to these matters; and consequently the disputes about settlements cannot so much arise from the uncertainty of the law, as from the uncertainty of the facts upon that law: and this, from the nature of the thing, must always be uncertain, as depending upon the testimony of witnesses, and those also for the most part of the meanest of the people.

There hath been also another cause of much altercation, upon appeals against orders of removal, which arises from some defect in those orders themselves; or from some error in the method of proceeding in relation thereto; which comes next to be considered.

III. Of removals.

i. Order of removal in general.

ii. Order of removal of a certificate person.

iii. Appeal against the order of removal.

i. Order of removal in general.

The statute of the 13 & 14 C. 2. c. 12. which hath been so often canvassed in treating concerning settlements, is not yet to be dismissed by us, but will appear again under this head, in a new and quite different light; as being that upon which all the orders of removal are or ought to be established. And in this view, there have been as many cases adjudged upon it, as in the other, although not altogether in so great a variety.

In treating of this subject, we will first set forth the statutes: Then the established form of an order of removal thereupon: And then take the same in pieces orderly and distinctly, thereby to discover the several shelves and rocks upon which numberless orders have been shipwrecked.

It is true, the statute of the 5 G. 2. whereby errors in point of form may be amended at the sessions, hath in some sort remedied these defects; but that it may appear how such errors are to be amended, and as it will be better if the order be such as shall need no amendment, and as it still remains a doubt upon that statute, what shall be deemed matter of form, and what shall be deemed of the substance of the order, this method is not the less to be pursued upon that account.

By the 13 & 14 C. 2. c. 12. it is enacted as follows: *Whereas by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most wood for them to burn or destroy, and when they have consumed it, then to another parish, and at last become rogues and vagabonds, it is enacted, That it shall be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of the peace, within 40 days after any such person coming so to settle in any tenement under the yearly value of 10l. for any two justices of the peace (one whereof is of the quorum) of the division where any person that is likely to become chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person to such parish where he was last legally settled, unless he give sufficient security for the discharge of the said parish, to be allowed by the said justices. s. 1.*

And if such person shall refuse to go, or shall not remain in such parish where he ought to be settled, but shall return of his own accord to the parish from whence he was removed, one justice may send him to the house of correction, there to be punished as a vagabond. s. 3. And by the 17 G. 2. c. 5. All persons who shall unlawfully return to such parish or place from whence they have been legally removed by order of two justices, without bringing a certificate from the parish or place whereunto they belong, shall be deemed idle and disorderly persons; and any one justice may commit them (being thereof convicted before him, by his own view, or by their own confession, or by the oath of one credible witness) to the house of correction, there to be kept to hard labour for any time not exceeding one month. s. 1.

And if the churchwardens and overseers of the parish to which he shall be removed, refuse to receive such person, and to provide work for him, as other inhabitants of the parish; any justice of that division shall bind any such officer in whom there shall be default to the assizes or sessions, there to be indicted for his contempt in that behalf. 13 & 14 C. 2. c. 12. f. 3.

And by the 3 W. c. 11. If any person be removed by virtue of this act, from one county, riding, city, town corporate, or liberty to another, by warrant of two justices; the churchwardens or overseers of the poor of the parish or town to which the said person shall be so removed, are required to receive the said person: and if he or they shall refuse so to do, such person so offending shall (on proof thereof by the oath of two witnesses before one justice of the place to which the person shall be removed) forfeit for each offence 5l. to the use of the poor of the parish or town from which such person was removed, to be levied by distress, by warrant to the constable of the parish or town where such offender dwells; and for want of sufficient distress, the said justice shall commit the offender to the common gaol for 40 days. f. 10.

Upon complaint made by the churchwardens or overseers of the poor of any parish to any justice of the peace] By these words one justice alone hath cognizance of the matter, so far as concerneth the complaint only; and by virtue thereof may issue his warrant to bring the party before him in order to his examination; or he may issue his warrant, to bring the party before himself and another justice, in order to hearing and determining the complaint; for he himself alone cannot hear and determine, but only bring the matter into the course of being heard and determined by two justices: and therefore it is most usual for the two justices originally to issue their joint precept to bring the party before them for that purpose. Nevertheless, if the party is willing, he may go voluntarily before the justices, at the request of the overseers, without any warrant at all.

The form of which warrants or precepts aforesaid, where they are requisite, may be to this effect:

Warrant

Warrant of one justice for a person to be examined concerning his settlement.

Westmorland. { To the constable of ———.

FORASMUCH as complaint hath been made before me ——— one of his majesty's justices of the peace in and for the said county, by the churchwardens and overseers of the poor of the parish of ——— in the county aforesaid, that A. P. hath come to inhabit in the said parish, not having gained any legal settlement therein, nor produced any certificate owning him to be settled elsewhere, and that the said A. P. is likely to become chargeable to the said parish of ———. These are therefore to require you to bring the said A. P. before me, to be examined concerning the place of his last legal settlement. Herein fail you not. Given under my hand and seal the ——— day of ———.

Warrant of two justices in order to the adjudication.

Westmorland. { To ———

FORASMUCH as complaint has been made before us ——— two of his majesty's justices of the peace in and for the said county, and one of us of the quorum, by the churchwardens and overseers of the poor of the parish of ——— in the said county, that A. P. hath come to inhabit in the said parish, not having gained any legal settlement therein, nor produced any certificate owning him to be settled elsewhere, and that he the said A. P. is likely to become chargeable to the said parish of ———. These are therefore to require you to bring the said A. P. before us, at the house of ——— in ——— in the said county, on ——— the ——— day of ——— at the hour of ——— in the afternoon of the same day, to be examined concerning the place of his last legal settlement, and to be further dealt withal according to law. Given under our hands and seals the ——— day of ———.

It may also not be unfitting, especially in cases of doubt or difficulty, to give notice (if it may be) to the overseers of the parish or place where the settlement is supposed to be, that they may attend, if they think proper, when the

the adjudication is made; which probably might prevent appeals oftentimes from such adjudications and orders: Which notice may be to the effect following.

Summons to shew cause against an order of removal.

Westmorland. **T**O the churchwardens and overseers of the poor of the parish of _____ in the county of _____, and to every of them.

This is to summon you, or some of you, to appear (if you shall so think proper) before _____, and such other his majesty's justices of the peace for the said county of W. as shall be at the house of _____ in _____ in the said county of W. on _____ the _____ day of _____ at the hour of _____ in the afternoon of the same day, to shew cause why A. P. should not be removed from the parish of _____ in the said county of W. to your said parish of _____. Given under _____ hand _____ and seal _____ this _____ day of _____ in the year of our lord _____.

And then the general form of an order of removal, as grounded upon the statute of the 13 & 14 C. 2. above recited, may be thus:

The form of a general order of removal.

Westmorland. **T**O the churchwardens and overseers of the poor of the parish of Orton in the said county of Westmorland, and to the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland, and to each and every of them.

Upon the complaint of the churchwardens and overseers of the poor of the parish of Orton aforesaid in the said county of Westmorland, unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace in and for the said county of Westmorland, and one of us of the quorum, that John Thomson, Mary his wife, Thomas their son aged eight years, and Agnes their daughter aged four years, have come to inhabit in the said parish of Orton, not having gained a legal settlement there, nor produced any certificate owning them or any of them to be settled elsewhere, and that the said John Thomson, Mary his wife, and Thomas and Agnes their children, are likely to be chargeable to the said parish of Orton; We the said justices, upon due proof made thereof, as well upon the examination of the said John Thom-
son

son upon oath, as otherwise, and likewise upon due consideration had of the premisses, do adjudge the same to be true; and we do likewise adjudge, that the lawful settlement of them the said John Thomson, Mary his wife, and Thomas and Agnes their children, is in the said parish of Penrith in the said county of Cumberland: We do therefore require you the said churchwardens and overseers of the poor of the said parish of Orton, or some or one of you, to convey the said John Thomson, Mary his wife, and Thomas and Agnes their children, from and out of the said parish of Orton, to the said parish of Penrith, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with our order, or a true copy thereof, at the same time shewing to them the original; And we do also hereby require you the said churchwardens and overseers of the said parish of Penrith, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the — day of — in the — year of the reign of his said majesty king George the third.

Westmorland] T. 2 G. 2. K. and the parish of St Stephenson. There was an order of removal by the justices of the town of Bedford, from the parish of St Peter's in Bedford, to the parish of St Stephenson in the county of Bedford. And it was only said in the margin the Town of Bedford, without mentioning in what county. It was moved to quash this order; and insisted, that it was necessary to mention what county this Bedford lay in, because the appeal must be to the justices of that county where it lies. And of this opinion was the court; but did not quash the order, by reason of a flaw in the certiorari by which it was removed. 1 Barnardist. 177, 196.

To the churchwardens and overseers of the poor of the parish of Orton] If a place is extraparochial, and hath no overseers, the justices cannot remove from thence, because there are none neither to complain nor to convey; but the justices ought first to appoint overseers, and then to remove, 2 Salk. 487. Foley 97, 98.

Of the parish of Orton in the said county of Westmorland] The county in the margin is not sufficient, but it must appear in the body of the order that the place is in such county, either expressly, or by some words of reference, as in the said county, or in the county aforesaid. Cas. of S. 151. Sess. C. V. 2, 181.

And

And to the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland] As the justices cannot send from an extraparochial place, unless they have overseers, so neither can they send to an extraparochial place, which hath no overseers, because there are none to receive them. 2 Salk. 487. Foley 97, 98.

E. 1 An. St George's and St Olave's. The order was to convey one Thomas Gill to the parish of St Olave, and it was directed, To the churchwardens and overseers of the poor of the parish of St Olave. Quashed: for they ought and can only order the parish officers where the intrusion is made, to make the removal. 2 Salk. 493.

Of the parish of Penrith] *E. 11 An. Spittlefields and Bromley.* A poor person was sent to the parish of Stepney, who did not appeal. On removal of the order into the court of king's bench, exception was taken, that the removal ought to have been to the township of Spittlefields; for Stepney is divided into four townships, and the poor have been removed from one township to another in the same parish, and the statute takes notice of townships as well as parishes, and Spittlefields is a hamlet of Stepney. By the court: If a person is removed to a wrong place, that place ought to appeal, and so Stepney ought to have done if it were a wrong place, or else the order will be conclusive upon them; but this is a matter here out of the record. Justices of the peace are not obliged to take notice of the divisions of parishes into townships and villages, which maintain their own poor severally and distinctly; and Stepney here upon an appeal might have shewn that the person did belong to the township of Spittlefields, which might have been a reasonable cause to discharge the order. Two townships within a parish are the same as two parishes; yet churchwardens are overseers of the poor of the whole parish (though so divided) and have a superintendency over the whole villages and townships. *Vin. Removal. H. 6.*

Upon the complaint] *H. 12 G. 2. K. and Hareby.* It was moved to quash an order of removal, because it did not set forth any complaint made: And by the court, the objection is fatal, for the complaint is the foundation of the justices jurisdiction. *Andr. 361.*

Upon the complaint of the churchwardens and overseers of the poor] *E. 1 An. Weston Rivers and St Peter's.* Exception to an order of removal, in that it was said to be upon complaint only, and not of the churchwardens or overseers,

seers. By the court, This exception is fatal; for no one can disturb a man coming into a parish, but they that have authority to do it: A complaint from one not concerned is nothing; it may be the parish is willing to keep him. 2 Salk. 492.

Upon the complaint of the churchwardens and overseers of the poor of the parish of Orton aforesaid] M. 9 An. Spalding and St John Baptist. The order was, To the churchwardens and overseers of the poor of the parish of *Spalding*, and to the churchwardens and overseers of the poor of the parish of *St John Baptist*: Whereas complaint hath been made by you — It was moved to quash the same for the uncertainty, because it did not say by which: but by *Parker Ch. J.* Sure that is well enough, for it is upon complaint of the right, if both complain. *Foley* 267.

Unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace] An order was quashed, because it did not appear that it was made by two justices: It was only, Whereas complaint hath been made unto us; without reciting their authority as justices, 5 Mod. 322.

Two of his majesty's justices of the peace] M. 4 G. K. and Westwoodhay. On complaint to one justice, two justices adjudge and remove; and it was held to be well: Otherwise, where one justice sets his hand to the order in the absence of the other. *Cases of S. 107. Str. 73.*

T. 11 G. 2. K. and Wykes. It was held, that though the complaint may be to one justice, yet the examination ought to be by two, and those the same who sign the order of removal. *Str. 1092.*

And, most undoubtedly, the justices ought to be both together at the hearing and determining; tho' the practice in many places is otherwise.

Justices of the peace in and for the said county] M. 12 An. 2. and Uplin. The order was quashed, because it did not say that they were justices of the peace, but only justices of the county. *Cases of S. 27.*

In and for the said county] M. 13 G. K. and Owlton. Exception was taken to an order for saying — unto us two of his majesty's justices of the peace in the county aforesaid; for that by this it appears only that they lived in the county, and not that they were justices for that county: And the court held this to be a fatal exception,

and quashed the order for that cause. *Seff. C. V. 2. 76.*
2 Salk. 474.

The said county] M. 8 W. It was objected to an order, that it did not appear thereby that the justices were of the *division*, which is required by the statute: But this objection was over-ruled, for that the statute therein is only directory. *2 Salk. 473.*

And one of us of the quorum] Abundance of orders formerly have been quashed, for not setting forth, that one of the justices was of the *quorum*; but now by the 26 G. 2. c. 27. no order shall be set aside for that defect only.

But if in fact neither of the justices shall be of the *quorum*, it seemeth nevertheless that such order shall not be good; for although the statute doth not require that the order shall set forth one of the justices to be of the *quorum*, yet it doth require that one of them shall actually be so. And there are many towns corporate whose charters have no *quorum*, but only do constitute certain of the chief officers justices to keep the peace, without giving them power to hear and determine felonies, trespasses, and other misdemeanors: That is to say, they have the power which the justices of the county at large have by the first assignment in the commission of the peace, which is the same that the conservators of the peace had by the common law, and is all that the justices of peace had at first by their commission. The power of hearing and determining, which they have now by the second assignment in the commission, and which only implies a *quorum*, is a separate and distinct authority, and was superadded to the former some years after the institution of the office of justices of the peace; and this power the justices in divers towns corporate have not, and consequently can have no *quorum*.

E. 6 G. Albright and Skipton. Upon an appeal from an order of removal made by two justices (one of the *quorum*); the sessions, reciting that they had perused the charter of *Albright*, and it not appearing thereby that the two justices were either of them of the *quorum*, therefore they quashed the order of removal. But by the court, The order of sessions must be quashed; not for want of any power in the sessions to look into the jurisdiction of the two justices, for that they certainly have; but because that want of jurisdiction is not sufficiently alledged; since they might have a jurisdiction though it did not appear upon the charter of *Albright*. The sessions should have

said in general, that it appeared to them, that the two justices were neither of them of the *quorum*, and that would have been good cause to quash the order of the two justices. *Str.* 300.

That John Thompson] *M.* 11 *An.* Southwell and Needwell. Whereas a certain woman hath intruded, These are therefore to require you to convey: Objection, It is not said who this woman was. And by *Parker Ch. J.* You must either name her, or say a certain woman unknown. *Caf. of S.* 57.

T. 10 *An.* Case of Newington. Whereas such a person hath intruded into the parish, and is likely to become chargeable; These are therefore to require you to remove him *with three children*. Quashed as to the children, for they have removed more than is complained of. *Caf. of S.* 45.

Mary his wife, Thomas their son] *H.* 10 *W.* Johnson's case. Order to remove a man and his family, not good; because too general; for some of the family might not be removable. 2 *Salk.* 485.

M. 5 *G.* Beaton and Siston. Order for removal of Thomas Black and his family: Upon the first reading, quashed as to the family, because too general. *Str.* 114.

T. 9 *W.* Flixton and Roston. Order to remove Jane Smith and her five children; Quashed as to the children, for the uncertainty; because it neither tells the names nor ages of the children: for she might have more children than five, and some of those five might have gained settlements. *Seff. C. V.* 1. 11. *Foley* 278.

T. 8 *G.* Hobe and Kingsbury. Two justices adjudging the settlement of the husband to be at Kingsbury, and that he is likely to become chargeable to Hobe, send him, his wife, and son of one year old, to Kingsbury; And whether this was good as to the wife and child, was the question: And it was held to be well enough; and the order was confirmed. *Str.* 527.

Thomas their son aged 8 years, and Agnes their daughter aged 4 years] *M.* 9 *An.* 2. and Middleham. Order to remove a child, of the age of ten years, to Middleham, because Middleham was the place where his father was last legally settled. Quashed by the court: for that there was no adjudication that Middleham was the place of the child's last legal settlement, and at that age it might have gained a settlement. *Foley* 271.

T. 10 *An.*

T. 10 An. Ringmore and Petworth. The order was, Whereas such a person and his 3 children are likely to become chargeable, and their last legal settlement was at *Ringmore*. It was moved to quash the same, because the childrens ages were not set forth. But by the court, It is not necessary in this case; for the order says, they were last legally settled in *Ringmore*, and then no matter what their ages are. *Caf. of S. 41.*

H. 11 G. K. and Trinity. This rule was laid down; Every order that concerns the removal of a father and his children, ought to shew the ages of the children, for they may have gained a settlement in some other right, as by being apprentices or servants; therefore their age ought to be set forth, that it may appear to the court, that by reason of their infancy they have not gained any settlement in their own right, but have only a relative settlement from their father. Seven years is an age that the court will presume a child could gain a settlement at, in his own right; but if it appears upon the order that the child was above 7 years old, the order must set forth, that such child hath not gained a settlement in his own right. *Seff. C. V. 2. 74.*

Have come to inhabit] E. 12 An. 2. and Graffham. The order sets forth, that *Henry Tate* and his wife do endeavour to intrude into the parish. And quashed by the court; for that he cannot be removed out of the parish, unless he hath come into it. *Caf. of S. 16.*

Not having gained a legal settlement there] E. 1 An. Wotton Rivers and St Peter's. Exception to an order of removal, that it was not said, that the poor person did not rent a tenement of 10l. a year, according to the words of the act. But as to this the order was held good. 2 *Salk. 493. 3 Salk. 254.*

Nor produced any certificate owning them or any of them to be settled elsewhere] For by the 8 & 9 *W. c. 36.* If they have a certificate, they cannot be removed for being likely to be chargeable, nor until they do actually become chargeable. But if the order set forth that they are actually become chargeable; then this clause therein, concerning the certificate, is superfluous.

Likely to become chargeable] *Scrivenham and St Nicholas.* Order, not saying that the party was likely to become chargeable; Quashed. 3 *Salk. 255.*

H. 4. G. Teelby and Willerton. Order, Whereas complaint hath been made, that Anne Stamp may become chargeable.—We adjudge the same to be true. Quashed; for that the act enables the justices only to remove persons likely to become chargeable, and not persons that possibly may be chargeable, for no one can say who may not be chargeable; and there is as much difference in this case between *may* and *likely*, as between a possibility and a probability. *Seff. C. V. 1. 117. Str. 77.*

T. 10 An. Order, Whereas such a person will become chargeable, if permitted to abide. Objected, this is uncertain; it may be ten years hence; Quashed. *Cases of S. 39.*

Note; It doth not appear from any adjudged case, that upon appeal it was ever controverted, whether the person was or was not likely to become chargeable. And in the case of *South Sydenham and Lamerton, T. 3 G.* Mr J. Eyre said, that by the words of the act, living on a tenement under 10 l. a year, and likely to become chargeable, are convertible terms. *Seff. C. V. 1. 115.*

Nevertheless, complaint must first be made, that the party is likely to become chargeable, before the justices can remove. And, in the case of *K. and Wykes, T. 11 G. 2.* an information was granted against a justice, for taking the examination of a person in order for his removal, upon the officers complaining, that he endeavoured to gain a settlement in the parish contrary to law; without complaining at the same time, that he was likely to become chargeable. *Andr. 238.*

It may be proper to take notice in this place, of the act of the 3 G. 3. c. 8. concerning officers, soldiers, and sailors, who served in the late wars; which makes a provision, with respect to such persons, that had not been made by any former act. Before this act, they might have set up trades in any city, town corporate, or other place, without being molested by reason of their exercising such trade; but for other reasons they might have been removed; as if they did not bring a certificate, and were likely to become chargeable. But now by this act, such officers, mariners, soldiers, and marines, who have served since Nov. 29, 1748, and not deserted, and also their wives and children, may set up such trades as aforesaid, without any molestation by reason of the using of such trade; nor shall they, or their wives, or children, during the time they shall exercise such trades, be removable to their place of settlement, until they shall become actually

chargeable. Two justices, in the mean time, may summon and examine them, concerning their place of settlement; and shall give them an attested copy of their affidavit, which shall be admitted as evidence in any general or quarter sessions.—So that such persons now, in like manner as certificate persons, shall not be removed until they shall actually become chargeable. So that their having served has the effect, in that respect, of a certificate; and in many cases is preferable to a certificate, since thereby they are in a better capacity of obtaining settlements for themselves, their children, servants, and apprentices.—And therefore the adjudication, as to such persons, must be that they are chargeable, and not that they are *likely to become chargeable*; for until they are chargeable, they cannot be removed.

To the said parish of Orton] *T. 10 An. 2.* and *Bradford*.—Likely to become chargeable, but not said to what parish; Quashed. *Cases of S. 40.*

But in the case of *K. and Witham super montem*; *H. 5 G.* By the court: *It appearing to us that he is likely to become chargeable*, is sufficient, without saying *to the parish from whence removed*; for it is not to give a jurisdiction; but only the reason of the judgment. *Str. 142.*

And, *M. 7 G. Maidstone and Dething*. It was held well enough in an order of removal, to shew a complaint that the party is come into the parish of *Dething*, and is likely to become chargeable, without saying farther, *to the said parish of Dething*. *Str. 393.*

And, *E. 12 G. K. and Leofield*. An order of removal, whereby a person was adjudged likely to become chargeable, without saying, *to the parish from whence removed*, was confirmed. *Str. 698.*

Upon due proof made thereof, as well upon the examination, &c.] *H. 13 G. 2. K. and Fisherton Dallemere*. Upon due consideration was held to be sufficient; for that due consideration implies a due examination. *Seff. C. V. 2. 45.*

Examination] *T. 12 W. Ware and Stanstead Mount Fitchet*. Exception to an order, for that it was said, it appears upon examination *before us or one of us*. By the court; The examination ought to be before both, because both are to make the judgment of removal. And *Gould J.* said, the statute directed, and the practice was, to make complaint to one justice, and he grants his warrant

rant to bring the poor man before two justices, and then they two examine and remove. 2 Salk. 488.

Examination of the said John Thomson] T. 11 & 12 G. 2. K. and Wykes. A person ought to have notice, and be heard before he be removed: for he may produce a certificate, or give other sufficient security, or shew cause otherwise why he ought not to be removed; especially as he himself perhaps, by the removal, is likely to be the greatest sufferer: and therefore natural justice requires, that he be not condemned unheard. Andr. 238.

Of the said John Thomson upon oath] In the case of K. and Wykes last abovementioned, one justice took the examination, and other two justices removed upon that sole examination, and in the order did set forth that the party was examined before themselves; for which, and for not summoning the party before them, an information was granted against the two justices. Andr. 238.

Upon oath] H. 10 G. Munger-hunger and Warden. Exception to an order, for that it is said to be made upon due examination, without saying upon oath: By the court, This is sufficient; for where it is said to be made upon due examination, it shall be intended to be upon oath. Sess. C. V. 2. 40.

Do adjudge the same to be true] T. 13 W. Suddecomb and Burwash. Order quashed, because it was only said to be complained by the officers, that the person removed was likely to become chargeable, but not adjudged so by the justices. 2 Salk. 491.

H. 4 G. K. and Westwood. Order quashed, because the justices only say, *We order him to be removed to such a place, as the place of his last legal settlement*, without adjudging that to be the place. Str. 73.

T. 3 & 4 G. 2. K. and Minchin-hampton. Order, Whereas complaint is made to us, that such a person is now become chargeable, we do adjudge that the last place of his lawful settlement is in the parish of Minchin-hampton. Objected, that here is no adjudication that he is likely to become chargeable; and quashed for this reason. Sess. C. V. 2. 93.

T. 4 G. Stallingsburgh and Haxhay. On examination we do believe the same to be true. Quashed; for a man may believe a thing on uncertain evidence. Sess. C. V. 1. 131.

E. 10 An. Waltham Magna and Parva. Whereas such a person is likely to become chargeable, as we are *credibly informed*, these are therefore to require you to remove: Quashed, for that here is no adjudication that he is likely to become chargeable; and this is only the belief of another. *Cases of S. 38.*

And we do likewise adjudge that the lawful settlement] *E. 9 W. Bury and Arundel.* Whereas complaint hath been made unto us, that *Jacob Duckin*, with his wife and children, came from his place of abode and last legal settlement in *Bury* to *Arundel*, We therefore require you to remove: Naught; for there is no adjudication of the justices which was his last legal settlement, but only a complaint that *Bury* was, which doth not appear whether true or false. *2 Salk. 479.*

T. 12 An. Eglium and Hartley-wintly. An order adjudges that a man was settled at such a place; and therefore they remove his widow thither: Quashed; for that here was no adjudication of the widow's settlement, and she might have gained a settlement after the death of her husband. *Seff. C. V. 1. 45.*

T. 3 & 4 G. 2. K. and Warnhill. Adjudication that the *last legal place* of the pauper is at *Warnhill* in the county of *Berks.* Quashed; for that is no adjudication of the settlement. *Seff. C. V. 2. 92.*

M. 3 An. It was held, that *legal settlement* and *last legal settlement* are the same thing; because by every new settlement the precedent is discharged. *2 Salk. 473.*

M. 12 An. St Mary Ottery and St Mary's. The justices in their order say, that the poor person was last settled there *according to their knowledge*: By the court; they should have said, he was last settled there; an order is a judgment, and must be certain and positive: he might have been settled elsewhere, and they not know it. Quashed. *Cases of S. 32.*

And provide for them] The statute directs, that the place whither they are sent shall receive and *provide* for them; for which reason the same is inserted here in the order: but it seemeth that when the removal is into another county, those words are unnecessary, because ineffectual; for that the justices in one county cannot take order for the relief of poor persons in another county.

[Besides this general form of removal to the place of settlement, there may be other removals, as of wives to their

their husbands, children to their parents, apprentices or servants to their masters, or of persons brought illegally from one parish to another. But this is not in pursuance of the statute of the 13 & 14 C. 2. but of the general power of the justices in regulating matters relating to poor persons. Thus in the case of *K. and Banbury*. A constable without a warrant brought a child from *Broughton* to *Banbury*. Two justices of *Banbury* made an order, reciting the fact, to return the child to *Broughton*, there to be provided for according to law. The court held the order good, for returning the child to the wrong doers; and therefore that part of the order was affirmed; but it ought not to be said, to be there provided for; but they are to be left to take their course according to law; therefore that part was quashed. *Comb.* 372.

So in the case of *K. and Gravesend, E. 13 W.* Two justices send *Jane Goodberry* from *Gravesend* to *Lawton* her master in *Chadwell* (with whom she was hired as a servant for a year) until she should be discharged. Afterwards, on the 21st of November (the first order being made the 6th of November by the justices of *Gravesend*) another order was made by two justices of the county of *Essex*, to send the same person from the parish of *Chadwell* to the parish of *Gravesend*. It was insisted that the second order was ill, being made before any appeal from the first order, or discharge from the service. But not allowed by the court: For the first order was to send the person to her master, and not to send her to the parish of *Chadwell* as the place of her settlement. *Comyns.* 97. — For both the orders in this case might well stand together: and the question upon the merits might be determined on appeal to the second order.]

SO much concerning the usual form of an order of removal: And after such order and adjudication is made, that the same may appear upon record afterwards, in order to charge the parish, it was said by *Holt Ch. J.* (1 *Salk.* 406.) that the most regular way for the justices to proceed, is to make a record of the complaint and adjudication, and upon that to make a warrant to the churchwardens and overseers, to convey the persons to the parish to which they ought to be sent; and deliver in the record by their own hands into court the next sessions, to be kept there amongst the records, to charge the parish. But how such record shall charge the parish is not perhaps very evident; unless it shall appear likewise, that a removal

was made in pursuance of such order: otherwise, how shall the parish be charged by an order which possibly they knew nothing of, and consequently could have no opportunity to appeal against. It is usual in some places, for the overseers who made the removal, to bring the original order to the next sessions, and there make oath, that they removed the party in pursuance of such order, and then if there appear to be no appeal against it, the order is confirmed by the court, and filed amongst the records. And although such confirmation is merely void, because the sessions have no jurisdiction therein, unless in the case of appeal, which here is not; yet such confirmation is also superfluous and needless, for the order not appealed against is final without more. And as such order is a record of itself, and contains in it the adjudication of the justices, it seemeth that the court may record thereupon likewise, that no appeal was made, for in that case they are the proper judges whether an appeal was made or not. But still it seemeth, that unless it be upon appeal, they have no power to enquire concerning the removal, for that as to them is extrajudicial: But the justices, who made the order, have a right to see it executed; and therefore they may inquire upon oath, whether the removal was duly made; and if it was, they may record the whole. Which record of the whole proceedings, being delivered in at the next sessions, and the court thereupon recording likewise that no appeal was made, in such case perhaps the parish may be concluded. And the form thereof may be thus:

Westmorland. **B**E it remembred, that on the nineteenth day of January, in the thirty-second year of the reign of our lord George the second, of Great Britain, France, and Ireland, king, defender of the faith, and so forth, at Middleton in the county aforesaid, Roger Thirbeck overseer of the poor of the township of Middleton aforesaid in the county aforesaid, cometh before us, John Moore, esquire, and Richard Burn, clerk, two of the justices of our said lord the king, assigned to keep the peace of our said lord the king within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and of the quorum, And complaineth to us the said justices, and giveth us to understand and be informed, that Solomon Caradice, son of Alice Caradice, aged nine years, hath come to inhabit and doth inhabit in the said township of Middleton in the county aforesaid, and is likely to become chargeable to the said township, and that the said Solomon

Caradice hath not gained any legal settlement within the said township, nor hath produced any certificate owning him the said Solomon Caradice to be settled elsewhere; And thereupon he the said Roger Thirnbeck prayeth our warrant to remove and convey the said Solomon Caradice to the parish or place where he the said Solomon Caradice was last legally settled.

And on the said nineteenth day of January in the year aforesaid, at Middleton aforesaid, in the county aforesaid, Margaret Caradice, grandmother of the said Solomon Caradice, cometh before us the justices aforesaid, and upon her oath on the holy gospel to her then and there by us the justices aforesaid administred, deposeth and sweareth, that she the said Margaret Caradice had a daughter whose name was Alice Caradice, which Alice Caradice was never married, and is now dead, and that she the said Alice Caradice did bear the said Solomon her son, at the parish of Beetham in the county aforesaid, and that the said Solomon hath been carried or gone about the country ever since in a state of vagrancy, that is to say, wandering and begging, and doth now inhabit in the said township of Middleton with William Caradice grandfather of him the said Solomon.

Whereupon, and on due consideration had of the premisses, we the justices aforesaid, on the said nineteenth day of January in the year aforesaid, at Middleton aforesaid in the county aforesaid, do make our warrant under our hands and seals in the form and words following; that is to say, [Here set forth the warrant of removal.]

And afterwards, on the twenty-first day of January in the year aforesaid, at Middleton aforesaid in the county aforesaid, the said Roger Thirnbeck, overseer of the poor aforesaid, cometh before us the justices aforesaid, and upon his oath on the holy gospel to him by us the said justices administred, deposeth and sweareth, that on the twentieth day of January in the year aforesaid, he the said Roger Thirnbeck did remove and convey the said Solomon Caradice from and out of the said township of Middleton to the said parish of Beetham, and him the said Solomon Caradice, together with a true copy of our warrant aforesaid, did deliver to O. P. overseer of the poor of the parish of Beetham aforesaid, at the parish of Beetham aforesaid in the county aforesaid. In witness whereof, we the said justices, at Middleton aforesaid in the county aforesaid, the twenty-first day of January in the year aforesaid, to this present record do set our seals.

And to this may be annexed the order of removal, confirmed at the sessions on appeal, or not appealed against.

And it may be proper to have duplicates; one filed at the sessions, and the other kept by the township.

By the 3 *W. c. 11.* as aforesaid, there is a penalty of 5*l.* inflicted on the churchwardens or overseers not receiving a person sent by warrant of removal. On which this case happened: *M. 28 G. 2. K. and Davis.* Indictment for refusing to receive a pauper, sent by order of two justices to the liberty of the *Tower.* Plea, not guilty. Verdict against the defendant. It was moved in arrest of judgment, that the 3 *W. c. 11.* having directed another method of punishment, to wit, a fine to be levied by warrant of distress in a summary way, that should be strictly pursued.—*Dennison J.* If a statute create a new offence, and give a punishment, that rule must be followed; but if the offence was before at common law, and a new punishment only given, it is indictable also. So if one statute give one punishment, and another statute give another punishment, the prosecutor has his election. This was an offence before the 3 *W.* Such a parish officer might have been indicted on the 13 & 14 *C. 2. c. 12.* or what would have become of a pauper in case of disobedience between the passing those acts? But the 3 *W. c. 11.* does not relate to removals from parish to parish, but from county to county; and therefore there is no remedy but by indictment.—*Foster J.* In all cases where a justice has power given him to make an order, and direct it to an inferior ministerial officer, and he disobeys it, if there be no particular remedy prescribed, it is indictable. And judgment was given against the defendant. [To which may be added, that the statute of 13 & 14 *C. 2. c. 12.* requires in express words, that such officer refusing *shall be bound over to the assizes or sessions there to be indicted.*]

If the person removed returns of his own accord, without a certificate; the aforesaid act of the 13 & 14 *C. 2. c. 12.* and also the vagrant act of the 17 *G. 2. c. 5.* have directed that he shall be sent to the house of correction, according as is above expressed. In the case of *Baldwin* and his wife against *Blackmore*, esquire, *£. 31 G. 2.* *Baldwin* and his wife were removed by order of two justices from *Marsden* to *Banknewton.* Which order was not appealed against. Afterwards, they both of them returned to *Marsden* without bringing a certificate. Of which, complaint being made in writing and upon oath to the defendant *Mr. Blackmore*, who was a justice of the peace for

for the county of *Lancaster*, he issued his warrant to bring them before him; who being accordingly brought, and the facts fully proved upon oath, he committed them to the house of correction, until they should be discharged from thence by due course of law. Upon the trial of this cause, there was a verdict for the plaintiff, and 1s. damages, subject to the opinion of the court, on the two following questions: 1. Whether there ought not to have been a previous conviction of vagrancy. 2. Whether the wife could be convicted of vagrancy, or be liable to be sent to the house of correction for returning without a certificate, as she only accompanied and resided with her own husband. On the argument of this cause, lord *Mansfield* intimated, that it would be a very right thing to compromise this matter; and he desired to be informed how the usage had been, about sending the wife to the house of correction with the husband: (tho' it would not indeed, as he observed, alter the law.) Afterwards, this case being mentioned as standing for the opinion of the court, Mr *Norton* (for the defendant) said, he had several certificates of its being the practice, for justices to commit the wife, as well as the husband, for returning to the parish from whence they have been removed, altho' she so returned with her husband.—Lord *Mansfield* delivered the resolution of the court: He observed, that it was manifest the justice had not acted intentionally wrong. And it is plain that the jury were of that opinion, as appears by their giving only 1s. damages. The court would gladly therefore have leaned towards excusing this gentleman from suffering for what he had honestly and without any bad intention done, if they could have found him justifiable by any legal excuse. But there is one fatal objection to his proceeding, which we cannot get over, and which puts all the other points out of the case; and that is, that the warrant of commitment is illegal. The legality of the warrant depends upon two acts of parliament, or at least upon one of them. For there are two acts of parliament, upon one of which two this warrant must be founded; tho' it doth not appear upon which of the two the justice proceeded. These two acts are, the 13 & 14 C. 2. c. 12. (a law made before the certificates under the late acts existed;) and the 17 G. 2. c. 5. (which relates to persons returning without bringing such a certificate.) Now the warrant is not within the former of these acts: The commitment is, *till discharged by due course of law*; whereas upon this act it should

should have been, to the house of correction, *there to be punished as a vagabond*, or, to a publick workhouse, *there to be employed in work and labour*. Nor can this warrant be good on the latter act; because the power given to the justice by that act is, to commit such offenders to the house of correction, *there to be kept to hard labour for any time not exceeding one month*: Whereas this warrant is quite general: It is an indefinite commitment; not for a precise limited time as the act directs. Therefore the warrant of commitment is totally illegal; and consequently, the plaintiff is intitled to the damages that he has recovered. *Burrow. 595.*

Note, It seemeth advisable, if the party returns without a certificate, not to send him to the house of correction till the time for appealing against the order of removal shall be expired; for the sessions may quash the order. And the statute of C. 2. says, if he shall not remain in such parish *where he ought to be settled*, he shall be sent to the house of correction. And the 17 G. 2. says, All persons who shall *unlawfully* return to such parish or place from whence they have been *legally* removed by order of two justices, shall be so sent to the house of correction. It is true, the order may be supposed *legal* till reversed: But it may put the pauper to great inconvenience, in removing his goods, family, and trade; and then returning (possibly) after the next sessions.

ii. Order of removal of a certificate person.

As it will appear from what hath been said under the former head, concerning the removal of poor persons having no certificate, that in most of the books there are many bad orders; so it will appear also from thence, and from what will be said under this head, concerning the removal of certificate persons, that as to this kind of removal there is scarce one good order (which is a little surprizing in a matter of daily practice), yea scarce one which is capable of being amended even by the statute of the 5 G. 2. for there are objections which go to the very essence and substance of the order, especially the want of proper adjudications, either that the party is become chargeable, or of the place of his last legal settlement (for he may have gained one after the certificate), or both: for a judgment without adjudging, is a contradiction; and where there is no judgment, there is in strictness nothing to appeal against, but only an order that

that the parish shall receive and provide for a person, who for ought appears doth not belong to them.

By the 8 & 9 W. c. 30. If any person who shall come into any parish or place, there to reside, shall deliver a certificate to one of the churchwardens or overseers there, such certificate shall oblige the parish or place granting the same, to receive and provide for the person mentioned in the said certificate, together with his family, as inhabitants of that parish, whenever they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place, to which such certificate was given; and then, and not before, it shall be lawful for any such person, and his children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place from whence such certificate was brought.

§. 1.

And by the 3 G. 2. c. 29. When any overseer or other person shall remove back any persons or their families, residing under a certificate, and becoming chargeable, to the parish or place to which they shall belong; such overseer or other person shall be reimbursed such reasonable charges as they may have been put unto in maintaining and removing such persons, by the churchwardens or overseers of the place to which such persons are removed; the said charges being first ascertained and allowed of by one or more justices for the county or place to which such removal shall be made; which said charges, so ascertained and allowed, shall, in case of refusal of payment, be levied by distress and sale of the goods of the churchwardens and overseers of the place to which such certificate person is removed, by warrant of such justice or justices.

§. 9.

Form of an order of removal of a certificate person.

Westmorland.

To the churchwardens and overseers of the poor of the parish of Orton in the said county of Westmorland, and to the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland.

WHEREAS complaint hath been made by the churchwardens and overseers of the poor of the parish of Orton aforesaid in the said county of Westmorland, unto us whose names are hereunto set, and seals affixed, being two of his majesty's justices of the peace in and for the said county of Westmorland,

morland, and one of us of the quorum, that John Thomson, Mary his wife, Thomas their son aged eight years, and Agnes their daughter aged four years, having for some time last past dwelt in the parish of Orton aforesaid, being allowed so to do by reason of a certificate bearing date the——day of——in the year of our lord——under the hands and seals of A. C. and B. C. churchwardens, and A. O. and B. O. overseers of the poor of the said parish of Penrith, attested by A. W. and B. W. two credible witnesses, and allowed by J. P. and K. P. esquires, two of his majesty's justices of the peace for the said county of Cumberland, according to the directions of the several acts of parliament in such case made and provided, are become chargeable to the said parish of Orton; And whereas it appears to us, as well upon the oath of the said John Thomson as otherwise, that neither they the said John Thomson, Mary his wife, Thomas and Agnes their children, nor any of them, have gained any legal settlement since the date of the said certificate: Whereby, and upon due consideration had of the premisses, it appears to us, and we do hereby adjudge, that the said John Thompson, Mary his wife, and Thomas and Agnes their children, are become chargeable to the said parish of Orton, and that the place of the last legal settlement of them and every of them is in the said parish of Penrith in the said county of Cumberland: These are therefore to require you the said churchwardens and overseers of the poor of the said parish of Orton, or some or one of you, to convey the said John Thomson, Mary his wife, and Thomas and Agnes their children, from and out of your said parish of Orton, to the said parish of Penrith, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time shewing to them the original; And we do also hereby require you the said churchwardens and overseers of the poor of the said parish of Penrith, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the——day of——in the year of our lord——

Allowed by J. P. and K. P. esquires, two of his majesty's justices of the peace] H. 9 An. K. and Newton. Order for removing a certificate person, not setting forth that it was allowed by two justices, but adjudging the parish which granted the certificate to be the place of the last legal settlement. By Mr. J. Probyn; The order is good, for it sets out that the pauper came by certificate, and adjudges that he was actually chargeable, and that Newton was the place of his last legal settlement, he having gained no settlement

settlement elsewhere since; which sets out the whole reason of their judgment, and would make the settlement good, if there had been no certificate. *Seff. C. V. 1. 149.*

M. 7 G. Barleycroft and Cole-overton. Order of removal of a certificate person; It was not said that the certificate was *attested*, but only that it was *allowed*. But by the court, The attestation is by the statute made previous to the allowance; and therefore when they say it was allowed according to the act of parliament, we must intend it was attested, for otherwise it could not be so allowed. And the order was confirmed. *Str. 402.*

Are become chargeable] E. 9 An. 2. and Brumstead. An order of two justices for the removal of a man that came into a parish by a certificate, was quashed upon this exception; It was said in the order, that they removed him, because he was *likely to become chargeable*: And the whole court were of opinion, that the justices cannot remove a person that comes into a parish by certificate, till he is actually chargeable to the parish. *2 Salk. 530.*

H. 4 G. Teelby and Willerton. The justices remove a certificate woman, being *likely to become chargeable*. But by the court; She is by the statute not removable, till she actually becomes chargeable. And the order was quashed. *Str. 77.*

And we do hereby adjudge] T. 2 An. Maldon and Fleetwick. An order was made, reciting, that whereas complaint hath been made unto us, that such a person, who is lately come into the parish with a certificate, is actually chargeable to the parish; these are therefore to require you to remove: And quashed, for that there was no adjudication. *2 Salk. 530.*

T. 15 G. 2. K. and Great Bedwin. Order of removal of a certificate person, in which there was no complaint of the churchwardens or overseers, nor any adjudication that the certificate person is actually become chargeable. On appeal, the sessions in pursuance of the *5 G. 2.* amend the order in these particulars, as matter of form only, and insert in the said order such complaint and adjudication. And now the question was, whether these amendments went only to matter of form, or to the substance and merit of the order? By *Lee Ch. J.* There has been but one case in this court on this act since the making of it, and that was not determined: The present seems to be a very strong case against the power of amending. For there
must

must be a *complaint* from the overseers, otherwise the justices have no power to remove; and a certificate person must be *adjudged* to be actually chargeable, otherwise he cannot be removed: And these amendments might be the real merits on which this case depended. And it would be a detrimental construction of the act, to take it so largely; and would be giving the sessions an original jurisdiction. And quashed by the whole court. *Seff. C. V. 2. 142. Str. 1158.*

But after all, it doth not appear, how it becomes necessary in the order of removal, to take any notice of the certificate at all, or to make any further use of it than as evidence to the justices of the settlement: And if it is not necessary to recite it, it is better to omit the same; because a misrecital, either in the date, or in the names of the persons, or in any other material parts, will be fatal, for that then there will be no such certificate as is there recited, and the order must fall of course. And I do not see, why the form may not be much more plain and simple, by drawing the same very little varied from the common form of an order of removal of other persons having no certificate. It is true, where the persons are only *likely to be chargeable*, it is then requisite to set forth in the order that they have no certificate; for if they have one, they cannot be removed till they actually be chargeable. But if the order do set forth that they are chargeable, in that case it is not at all material whether they have a certificate or not; for in both cases alike, they are then equally removable. And if so, then the form may be this, both for a certificate person, and for a person having no certificate, who is actually become chargeable:

Westmorland. **T**O the churchwardens and overseers of the poor of the parish of Orton in the said county of Westmorland, and to the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland, and to each and every of them.

Upon the complaint of the churchwardens and overseers of the poor of the parish of Orton aforesaid in the said county of Westmorland, unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace in and for the said county of Westmorland, and one of us of the quorum, that John Thompson, Mary his wife, Thomas their son aged 8 years, and Agnes their daughter aged 4 years, have come to inhabit in the said parish of Orton, not having gained a legal settlement there, and that the said John Thomson,

Mary

Mary his wife, and Thomas and Agnes their children are now chargeable to the said parish of Orton; We the said justices, upon due proof made thereof, as well upon the examination of the said John Thomson upon oath, as otherwise, and likewise upon due consideration had of the premisses, do adjudge the same to be true; and we do likewise adjudge, that the lawful settlement of them the said John Thomson, Mary his wife, and Thomas and Agnes their children, is in the said parish of Penrith in the said county of Cumberland: We do therefore require you the said churchwardens and overseers of the poor of the said parish of Orton, or some or one of you, to convey the said John Thomson, Mary his wife, and Thomas and Agnes their children, from and out of your said parish of Orton, to the said parish of Penrith, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time shewing to them the original; And we do also hereby require you the said churchwardens and overseers of the poor of the said parish of Penrith, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the — day of — in the — year of the reign of his said majesty king George the third.

It doth not appear what shall be done, if a certificate person, after having been removed, shall return with a new certificate; that is, whether or no the parish shall be obliged to receive him again, until he shall again become chargeable. It sometimes happeneth, that a certificate person is decoyed into acceptance of relief from the parish officers, in order that they may get rid of him. If a new certificate shall intitle him to return, this kind of practice may be frustrated. Upon a removal, the certificate is at an end. But the parish may grant him another. And there is no law which seemeth to give power to any parish to refuse him.—But this is a case not likely to happen frequently; because the parish granting the certificate must pay the charges of removing such certificate persons when chargeable, and of their maintenance in the mean time.

iii. Appeal against the order of removal.

1. All persons who think themselves aggrieved by any such Power of appeal-judgment of the said two justices, may appeal to the justices of ^{ing.} the peace of the said county, at their next quarter sessions, who shall do them justice according to the merits of their cause. 13
& 14 C. 2. c. 12. s. 2.

And

And by the 8 & 9 W. c. 30. *The appeal against any order of removal of any poor person, shall be had, prosecuted, and determined, at the general or quarter sessions of the peace for the county, division, or riding, wherein the parish, township, or place, from whence such poor person shall be removed, doth lie, and not elsewhere.* f. 6.

All persons who think themselves aggrieved] E. 4 W. K. and Hartfield. Two justices removed Nicholas Wells, from the parish of Hartfield, to the parish of Frampfield; from which order, Wells the party himself, and not the parish, appealed: It was objected, that the party himself cannot appeal, because the appeal is given only to the parish aggrieved: but by the whole court, The party may appeal as well as the parish. *Carib.* 222.

T. 4 G. K. and Almonbury. An order of two justices is quashed at the sessions upon appeal, without saying, *at the appeal of the party grieved.* And the court inclined to quash the order for this fault, till they were informed the precedents were most of them so, and for that reason and that only, as Pratt Ch. J. declared, the order was confirmed. *Str.* 96.

At the next general or quarter sessions] E. 2 G. 2. K. and Norton. Exception was taken to an order of sessions, for discharging an order of removal, because the justices order was dated June 21, and the sessions order was not till Michaelmas sessions following, so that Midsummer sessions intervened. To this it was answered, that by the express words of the statute the appeal is to be to the next sessions after the parties find themselves aggrieved, which is not till the removal: and for ought appears Michaelmas sessions might be the next sessions after the grievance. And so it was held in the case of Milbrook and St. John's in Southampton, M. 1 G. To which the court agreed, and the sessions order was affirmed. *Str.* 831.

T. 11 W. K. and Langley. It was moved to quash an order of sessions, because the justices had adjourned the appeal from one sessions to another, and so the determination upon the appeal was not at the next quarter sessions. But by the court; The appeal must be lodged at the next quarter sessions, but when it is lodged, the justices may adjourn it. 2 Salk. 605. Comb. 365.

But where the sessions itself is adjourned, the style of the sessions ought not to run *at such a sessions held by adjournment*, but the time of the first meeting of the sessions ought

to

to be set forth, and that the same was continued to such further time by adjournment: As in the case of *Q.* and the inhabitants of *Hinderclieve*: An order made at the general quarter sessions of the peace held by adjournment was quashed, because it did not appear that this was the next general quarter sessions, for it might be that the sessions was begun, and continued by adjournment before the order was made. *Vin. Sess. T. 4.*

H. 20 G. 2. K. and Polstead. Appeal was made to the quarter sessions in *Suffolk* held *April 7. 1746.* against an order of removal. The sessions was adjourned to *April 9.* at *Woodbridge*, where for want of a sufficient number of justices nothing could be done. *April 11.* a sessions is held at *Ipswich*, and adjourned to the 14th at *Bury*, where the appeal was allowed. It was moved to quash the order of sessions, as made without jurisdiction, the sessions ending for want of an adjournment at *Woodbridge*. And of that opinion was the court; for the words in the 2 *H. 5. c. 4. and more often if need be*, were never considered as giving more than one original sessions in a quarter, but only empowering adjournments. The country must take notice of adjournments, but are not supposed to expect a new sessions till the usual time. And the order of sessions was quashed. *Str. 1263.*

T. 15 G. 2. Roode and North Bradley. A person was removed from *Roode* to *North Bradley*. *North Bradley* gave notice of appeal; on which *Roode* took him back, but however got their order confirmed at sessions. The next sessions set both aside as fraudulent. And now *Roode* insisted, that the order was good, as not being appealed from at the next quarter sessions: And as to the other, that it was not in the power of one sessions to set aside the act of the other. All being now before the court, they quashed the first order, as being properly quashable on appeal; and would not take notice, that it was not at the next sessions after service of the order, which being in the case of a recent appeal, they would suppose to have been served too late for an appeal to the next sessions. And as to the order of confirmation, they quashed that, as not being made on any appeal, and consequently without jurisdiction, and at the same time quashed the latter part of the second sessions order, which rescinded that confirmation, as not being properly before them. *Str. 1168.*

10002. (Removal.)

For the county, division or riding, from whence the removal was] *E. 13 W. Watford and Wendover.* Two justices of *St Albans* remove a poor person to *Wendover*. *Wendover* appeals to the sessions at *St Albans*, where the order was confirmed. By the court; The appeal ought to have been to the sessions of the county, and not of the corporation; and as it was, it was *coram non judice*. 2 Salk. 490.

And in the case of *Malden, M. 11 An.* By Lord Parker, where there is a town corporate that hath sessions of its own, and the justices within that town make an order there, if the parties will appeal, they must appeal to the county sessions, and not to their own sessions, for then there would be an appeal *ab eodem ad eundem*, there being, it may be, the same justices sitting, who made the order. *Caf. of S. 10.*

And by the statute of the 17 G. 2. c. 38. In all corporations or franchises, who have not four justices, persons aggrieved may appeal (if they think fit) against any orders of the justices, to the next sessions of the county. s. 5.

Notice of appeal.

2. No appeal from any order of removal shall be proceeded upon, unless reasonable notice be given by the churchwardens or overseers of the parish or place appealing unto the churchwardens or overseers of the parish or place, from which the removal shall be; the reasonableness of which notice shall be determined by the justices at the quarter sessions to which the appeal is made; and if it shall appear to them, that reasonable time of notice was not given, then they shall adjourn the appeal to the next quarter sessions, and then and there finally determine the same. 9 G. c. 7. l. 8.

Reasonable notice] It is not expressed in the act, that this notice shall be in writing; but the court will better judge of the reasonableness of it, if it shall be in writing: And it may be thus:

TO the churchwardens and overseers of the poor of the parish of _____ in the county of _____.

This is to give notice to you and every of you, that we the churchwardens and overseers of the poor of the parish of _____ in the county of _____ do intend at the next quarter sessions of the peace to be holden for the said county of _____ to commence and prosecute an appeal against an order of J. P. and K. P. esquires, two of his majesty's justices of the peace for the said county of _____ for and concerning the removal of _____

to our said parish of ———. Witness our hands this ———
day of ———.

A. B. }
C. D. } Churchwardens.
E. F. }
G. H. } Overseers of the
poor.

3. *H. 12 An. Malendine and Hunsdon.* Two justices by an order send some poor persons to *Hunsdon*. Two justices there by an order send them back again. By the court; They ought to have appealed, and not sent them back; and held the order of the first two justices to be good, because there was no appeal against it. *Fol. 273.*

Order not ap-
pealed against,
is final.

T. 12 W. Chalbury and Chipping Farringdon. A person was removed by order of two justices from a parish in *Warwickshire* to *Chalbury* in *Oxfordshire*, from thence by order of two justices to *Chipping Farringdon* in *Berkshire*: It was objected, That *Chalbury* ought to have appealed, and got the order upon them discharged. Which *Holt Ch. J.* agreed: For sending the poor man to another place, is falsifying the first order, which cannot be done, but by appeal; for the order of two justices is a determination of the right against all persons, till it be reversed: *Chalbury* should have appealed from the *Warwickshire* order, and got that set aside, and sent the man back thither; and the justices there should have sent him to *Chipping Farringdon*. Therefore the latter order was naught. *2 Salk. 488.*

E. 5 G. 2. K. and Northfeatherston. Two justices made an order, by which they removed a man, his wife, and 4 children naming them, to *Featherston*; and there was no appeal. Afterwards *Featherston* finds out that this woman was not the wife, for that the man, tho' married to her, was married before to another woman, and consequently the second marriage totally void. And they remove the woman by her maiden name to *Horsington*, and the four children thither also as bastards. *Horsington* appeals; and the sessions upon hearing the matter state the case specially, that this woman and the 4 children were the same with the woman and children removed by the first order, and gave judgment that the first order was conclusive, and thereupon quashed the said second order. And by the court; They have slipped their opportunity, and the first order not appealed against is conclusive. *Self. C. V. 1. 154.*

M. 16 G. 2. Nympsfield and Woodchester. In 1731, a man and his wife were removed from *Nympsfield* to *Woodchester*, and there was no appeal. They had afterwards returned to *Nympsfield*, and had there three children, who were now sent from *Nympsfield* to *Woodchester* together with the father. And upon an appeal as to the children, it was offered to give in evidence, that the man had a former wife, and consequently the children born at *Nympsfield* were as bastards settled there. The sessions refused to let *Woodchester* go into this evidence, being of opinion, that *Woodchester* was concluded by the first order unappealed from, and that it made no difference that the children were born afterwards. The court, on debate, confirmed both orders: for the marriage being established by the first order, the settlement of the children (which is derivative) follows of course; and can no way be impeached, but by entering into the merits of the first order, which hath been acquiesced in. And nothing is more established, than that an order unappealed from is conclusive. *Str. 1172.*

Sessions to proceed upon the merits.

4. By the aforesaid statute of the 13 & 14 C. 2. it is expressed, that the justices upon the appeal, shall do to the parties justice according to the merit of their cause.

And by the 5 G. 2. c. 19. On all appeals to the sessions against the judgments or orders of any justices of the peace, the justices there shall cause defects of form to be rectified and amended, without any cost to the party, and after such amendment shall proceed to hear the truth and merits of the cause. f. 2.

Court equally divided on the appeal.

5. *T. 8 & 9 G. 2. K. and the justices of Westmorland.* Order of two justices of the borough, for removing a poor family. Appeal to the sessions of the county, at which only four justices were present, who were equally divided; so no determination was made, nor the appeal adjourned. A *mandamus* was directed to all the justices of the county in general, to proceed on the appeal. It was returned, that at such a sessions an appeal was lodged, and that four justices only attended, two whereof were interested in the question, the other two were divided in opinion. It was agreed on all hands that this return was very odd, and not to be supported. *Sir Thomas Abney* objected, that the writ of *mandamus* was bad, and ought to be quashed, for that it doth not appear, that the appeal was before them; and that, for ought appears, the *mandamus* requires the justices to do an impossible thing, viz. to proceed on an appeal not before them, since the appeal being lodged at a former sessions, was not continued over to the subsequent sessions,

sessions, and therefore was by law gone. Mr. *Robinson* on the other side said, that it was not usual in such cases to return the continuance; but that if in fact there was no such continuance, the fault was in the justices, who ought to have adjourned the appeal, till by the coming of more justices, the matter might have been determined. By *Hardwicke* Ch. J. the question is, Whether there is a possibility of the justices proceeding in this appeal? He thought, if there was not, as there would be a failure of justice in this respect, an information ought to go against the justices who were at the sessions. He ordered the case to stand over, and recommended it to Sir *Thomas Abney* to advise his clients to proceed on the appeal, or return the continuances; and seemed at length inclined, if they did not comply, to grant a peremptory *mandamus*. Sess. C. V. 2. 193. But the pauper in the mean time running away, nothing further was done.

6. *M. 3 An. St Andrew's and St Clement's Danes.* The sessions made an order, on an appeal from an order of removal, and afterwards the same sessions vacated it by a subsequent order; and a *certiorari* being brought, both orders of sessions were returned thereon. By *Holt* Ch. J. The sessions is all as one day, and the justices may alter their judgment at any time, whilst it continues; but they should not have returned the vacated order, but only the latter; for the effect of the court's setting aside the first order is, that it ceaseth to be an order, and consequently ought not to be returned as an order vacated by another order, but it should have been annulled and made nothing. 2 *Salk.* 494, 606.

The justices may alter their order during the same sessions.

7. *And for the more effectual preventing of vexatious removals and frivolous appeals, the justices in sessions upon any appeal concerning the settlement of any poor person, or upon any proof before them there to be made, of notice of any such appeal to have been given by the proper officers to the churchwardens or overseers of any parish or place (though they did not afterwards prosecute such appeal), shall at the same sessions order to the party in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, such costs and charges in the law, as by the said justices in their discretion shall be thought most reasonable and just; to be paid by the churchwardens, overseers, or any other person, against whom such appeal shall be determined, or by the person that did give such notice; and if the person ordered to pay such costs, shall live out of the jurisdiction of the said court, any*

Costs on the appeal.

justice where such person shall inhabit, shall on request to him made, and a true copy of the order for the payment of such costs produced, and proved by some credible witness on oath, by his warrant cause the same to be levied by distress; and if no such distress can be had, shall commit such person to the common goal, there to remain by the space of 20 days. 8 & 9 W. c. 30. s. 3.

M. 5 G. 2. K. and the justices of the county of Nottingham. A mandamus was granted for the justices to give costs to the party in whose favour the appeal had been determined; yet upon their return of it, the court held it reasonable for them to have the power of judging whether costs shall be allowed or not, and thereupon quashed the writ of mandamus. *Nell. Poor.*

Maintenance to
be reimbursed.

8. For the preventing of vexatious removals, if the justices shall at their quarter sessions, upon an appeal before them there had, concerning the settlement of any poor person, determine in favour of the appellant, that such poor person was unduly removed, they shall, at the same quarter sessions, order and award to such appellant, so much money, as shall appear to the said justices to have been reasonably paid by the parish or other place on whose behalf such appeal was made, towards the relief of such poor person, between the time of such undue removal, and the determination of such appeal; the said money so awarded, to be recovered in the same manner as costs and charges upon an appeal are to be recovered by the statute of the 8 & 9 W. 9 G. c. 7. s. 9.

E. 3 G. 2. St. Mary's Nottingham and Kirklington. Motion for a mandamus to the justices of the town and county of Nottingham, commanding them to allow the parish of Kirklington the expence and charges their officers had been put to, in keeping a poor person from the time of his removal, till the order was discharged by the sessions upon appeal. And a mandamus was granted. *Sess. C. V. 2. 67.*

Order confirmed
upon the appeal,
is final.

9. *M. 13 W. Mynton and Stony Stratford.* By Holt Ch. J. and the court; If on appeal to the sessions an order be discharged, that judgment binds only between the parties: But when upon appeal an order is confirmed, that is conclusive to all persons as well as to the parties; for it is an adjudication that this is the place of the party's last legal settlement. 2 Salk. 527.

M. 10 W. Harrow and Riselip. A person comes into Harrow, and being likely to become chargeable, was removed to Riselip. Riselip appealed; and upon the appeal he was adjudged to be settled at Riselip. Afterwards Riselip discovered

discovered, that *Hendon* was the place of his last legal settlement, and sent him thither; and the question was, Whether after the adjudication upon the appeal, *Risclip* was not estopped against all the world, to say, that *Risclip* was not the place of his last legal settlement. By *Holt* Ch. J. *Risclip* is estopped to say otherwise; for if *Risclip* had not been the very place of his last legal settlement, the justices must have sent him back to *Harrow*, who were first possessed of him, for that reason, because they were possessed of him, and he did not belong to *Risclip*. And now this is in effect the same question again, namely, whether he belongs to *Risclip*? Which question has been already determined by the justices on the appeal who have adjudged that he was last settled at *Risclip*. Now this point being determined, the appeal must be final and conclusive, otherwise there would be no end of things. 2 *Salk.* 524. 3 *Salk.* 261.

M. 6 G. Little Bitham and Somerby. A person is sent by order of two justices to *Somerby*, as the place of his last legal settlement. *Somerby* appeals, and the order is confirmed. Soon after, without stating that he had gained any new settlement, *Somerby* sends him to a third place. By the court, An order of reversal is final only between the two parishes; but if it be confirmed, it is final as to all the world; and therefore no new settlement appearing, the order of removal from *Somerby* must be quashed. *Str.* 232.

10. *H. 10 W. St. Michael's Bedingham and Kingston Bowsey.* Order reversed on the appeal is conclusive only as to the parish acquitted, but the first parish may remove again to any parish not party to the former removal. Order quashed on the merits, conclusive only between the parties. 2 *Salk.* 486.

T. 9 G. Foston and Carlton. Two justices send a poor person from *Foston* to *Carlton*. On appeal the order is quashed; and at three months end, two justices, without shewing any new settlement since the last order, make a new order to remove him from *Foston* to *Carlton* a second time. But by the court, The last order must be quashed: The case of *Barrow and Ingolby*, *E. 11 An.* was at the distance of nine months, but the court quashed it, because there could be no inconvenience in putting them to shew a new settlement. *Str.* 567.

E. 29 G. 2. Bradenham and Thame. Two justices by order of removal, dated December 30, 1754, send *John Saunders* and *Sarah* his wife and for children from *Thame* to *Bradenham*, as the place of their last legal settlement.

Bradenham

Bradenham appealed to the next (*Epiphany*) sessions, and the order of two justices was discharged. Afterwards on *March 28, 1755*, two justices make a new order, for removing *Sarah* the wife of *John Saunders* and her children from *Thame* to *Bradenham*. Upon appeal, the sessions adjudge the last settlement of *Sarah Saunders* and her children to be in the parish of *Bradenham*, and confirm the order. On removal of these four orders into the court of king's bench, Mr. *Norton* moved to quash these two last orders; and cited *Foston* and *Carlton*; and said, the order of reversal was conclusive between the two parishes, that there might be an end of things; and that one sessions shall not counteract and control the acts of a former, unless they state specially, which they have not done here. By Mr. justice *Denison*; The last order must be quashed. We must take the appeal, on which the original order is discharged, to be on the merits. The matter has been determined already between these two parishes, and it must be conclusive. But it is said, there are cases where there may be a new removal, as supposing there had been one or two years distance between the two orders of removal, or a sufficient time to gain a new settlement; yet the court will not intend one gained, unless it is stated in the order. And in this case there is no such time. Mr. justice *Foster*: The first order is final, unless it appears that it was discharged for want of form. If any subsequent settlement is gained, it ought to appear on the face of the order. If we suffer the sessions to confirm an order that has been discharged by a prior sessions, without stating any thing new, we destroy the principle on which the court has always proceeded. Mr. justice *Wilmot*: As to the husbands *running away*; nothing can by any possibility be intended on these orders; injustice might be done by such intendment, for how can we intend one way rather than the other—And the two last orders were quashed.

E. 19 G. 2. Osgathorpe and Diserth. A person was removed by order of two justices from *Diserth* to *Osgathorpe*; which order on appeal was discharged. He was by a second order sent from *Diserth* to *Osgathorpe* as a certificate man; and upon an appeal it was stated, that the first removal was *before* he became chargeable, and the second *after* he became so; and the sessions were of opinion, that the first determination was not final between the parishes, and therefore confirmed the second order of removal. It was moved to quash these two last orders, on the authority of those cases wherein it hath been determined, that a reversal is final between the parties. But by the court, So it would be, if the special matter

did not appear; a certificated person cannot be sent back, until he is actually a charge: a removal before is premature: The consequence of which only is, that he must be suffered to remain till he doth become chargeable, but not to make a premature removal final for ever. The last orders must be confirmed. *Str.* 1256.

E. 30 G. 2. Bentley and Baxterly. Mr. Norton shewed cause, why an order of sessions, confirming an original order for removal of one *Pickering* from the parish of *Baxterly* to *Bentley*, should not be quashed. The case specially states, that the pauper was first removed from *Baxterly* to *Stourbridge*, which order, on appeal to the next sessions, was discharged. Then *Baxterly* removed to *Bentley*, and *Bentley*, upon appeal offered to give evidence that the pauper had gained a settlement at *Stourbridge*, subsequent to the settlement which they acknowledged he had gained in *Bentley*: The sessions refused to hear this evidence, because the settlement set up in *Stourbridge* was anterior to the first appeal made by *Stourbridge*, and confirmed the order of removal to *Bentley*.—Mr. Norton allowed the general doctrine, that an order confirming is conclusive to all, and that an order discharged upon an appeal is final only between the two parishes; and said, the reason was, that when a point was once determined by a proper jurisdiction, it might be at rest, and not be hawled over again and again; that this reason was with his client, for the evidence offered was the very point which had been determined upon the first appeal. If upon this second appeal, the sessions had held he was settled at *Stourbridge*, there would have been two records repugnant to each other. It would be hard to throw the pauper upon *Baxterly*, as they could not again remove him to *Stourbridge*; and so the wrong adjudication of the first sessions would conclude for ever an innocent parish.—Mr. *Wheeler*, on the other side, insisted upon the general rule before; and said, the parish removing take upon themselves to remove to the place of the last legal settlement at their peril. The appellants are at liberty to avail themselves of every legal evidence, to rid themselves of the charge. And if it is hard upon *Baxterly*, that they failed in their evidence against *Stourbridge*; it would be much harder upon *Bentley*, that they should be affected by any transaction betwixt those two other parishes. And he cited the case of *Cirencester* and *Coln St Aldwyn's*, as in point, *M. 8 G. 2.* which was thus: A pauper was removed from *Minety* to *Coln St Aldwyn's*. On appeal, the sessions reversed that order.

order. Afterwards the pauper went to *Cirencester*, and was removed to *Coln St Aldwyn's*. Upon appeal, the sessions reversed this order, because they thought the first conclusive. But by lord *Hardwicke* Ch. J. I take it to be clearly settled, where an order of removal is confirmed, it is conclusive to all the world; where it is discharged, it is conclusive only between the two contending parishes: This distinction is reasonable; because a third parish may be able to give better evidence than the other could. And the order of sessions was quashed.—In the present case: By lord *Mansfield* Ch. J. An order confirmed concludes all the world. It is a suit instituted and determined by a court having proper jurisdiction, between all proper parties. For the parishes and the pauper were the only proper parties. It is establishing one certain fact, which when ascertained regards all the world, and is not to be considered in the light of a *res inter alios acta*. So the finding that such a one was the father of such a child, or the fact of a marriage, or that a person is executor, by suit properly instituted in the spiritual court; in all these cases, when the fact is once established by proper judges, and between proper parties, it is a truth which regards the whole world. But an order discharged, is only a kind of negative finding, that such a settlement is not the last legal settlement. But does this establish the affirmative, namely, What is so? There is all the reason in the world to let in a third parish, not party to the suit, to give what evidence they can; because it would otherwise open a door to much collusion between parishes. The sessions in substance have said no more than this; “Upon the case made out to us, the pauper is not settled at *Stourbridge*,” but this ought not to conclude the third parish from giving what evidence they can to discharge themselves.—*Denison* J. said, The case of *Coln St Aldwyn's* and *Cirencester* is in point.—*Foster* J. was of the same opinion.—*Wilmot* J. This distinction is a settled point, and founded upon reason and good sense. Where an order is confirmed, it is a solemn determination that the pauper is settled in the parish he is removed to, which parish had full opportunity to shew if he was settled elsewhere, and might give all the evidence which could be expected to discharge themselves, and therefore ought ever after to be estopped from saying he is not their parishioner. Otherwise it is, where the order is quashed upon appeal: for there they only say he is not settled in *A*, and the parish to which he is next removed could have no opportunity to defend themselves, and they may be

be able to produce better evidence. For nothing is more common in settlement cases, than for one parish to be able to get at evidence, which another parish could not produce:—And the orders were quashed.

11. An order of two justices, if quashed at the sessions upon an appeal, for want of form only, is not conclusive between the two parishes. *Foley* 276.

12. It was moved for setting aside an order of sessions confirming an order of two justices upon appeal. But the court would hear nothing of the merits of the cause, the order of sessions being in that case final, unless there had been error in form. *1 Ventr.* 310.

M. 9 An. South Cadbury and Braddon. On appeal to the sessions, the court discharged the first order. It was moved to set aside the order of discharge, because the justices do not say, whether they discharge it for form, or on the merits; for if it was for form, the parish is not bound; but if on the merits, the parish in consequence is hereby discharged for ever. But by the court; The justices are not bound to express the reason of their judgment, any more than other courts; but the reason of their judgment must be collected from the record. Particularly,

If the sessions reverse the first order, and that being removed appears to be good, this court will intend it was reversed on the merits, and affirm the order of sessions.

If the sessions reverse the first order, and that being removed appears not to be good, we must intend it was reversed for form, and affirm the order of reversal.

But if the sessions affirm the first order, and that appears to be good, we must affirm the order of sessions.

But if the first order appears bad, and the sessions affirm it, this court will reverse it, because it appears naught. *2 Salk.* 607.

So that the case is this: If the sessions by their order do barely affirm or quash the order of two justices, and both the said orders are removed into the king's bench, the court hath nothing properly before them to judge upon, but the validity of the first order of the two justices. And if that order appears *good as to form*, and is *confirmed* by the sessions, the court will intend it was confirmed upon the merits; If it is *good as to form*, and *quashed* by the sessions, the court will intend it was quashed upon the merits; If it is *bad as to form*, and is *confirmed* by the sessions, the court will quash the confirmation, because it appears to be erroneous; If it is *bad as to form*, and is *quashed*

Orders quashed for form, not conclusive between the parties. Superintendency of the court of king's bench.

quashed by the sessions, the court will intend it was quashed for form.

But if the sessions, by their order, do not barely affirm or quash the order of the two justices, but set forth the reasons of their said order, and state the case specially thereupon; then the court will judge upon the case so stated by the sessions; that is to say, they will judge of the law as it arises upon those facts stated, but not of the facts themselves, for those they will suppose to have appeared sufficiently to the justices upon the evidence. And this is the method, when the justices are doubtful in point of law, whereby to obtain the opinion of that court, namely, in their order of sessions which confirms or quashes the order of the two justices, to state the case specially; and then the party which is not satisfied, by procuring the same to be removed into the king's bench by *certiorari*, may have it determined there by the judgment of that court, who will quash or confirm the order of sessions as they see cause.

AFTER determination of the appeal, if the order is reversed, there is a difficulty sometimes in getting the paupers back again to the place from whence they were unlawfully removed. If they will not or are not able to return of themselves, it seemeth that the place where they are cannot lawfully be rid of them but by another order of the justices, setting forth the matter specially. As in the case of *Honiton* and *South Beverton*, *M. 8 W.* Two justices remove a man from *Honiton* in the county of *Devon*, to *South Beverton* in the county of *Somerset*. They appeal to the sessions in *Devon*, where the order is reversed. Now two justices in the county of *Somerset* may by order remove him to *Honiton* again; for it is but an execution of the order of sessions, which could not otherwise be done, because it is out of the jurisdiction of the court of session. *Comb. 401.*

IV. Of the poor rate, and other helps towards their relief.

- i. Of the poor rate.
- ii. Taxing others in aid.
- iii. How far parents and children are liable to maintain each other.

i. Of

i. Of the poor rate.

It is curious to a contemplative person, to investigate by what steps and degrees the compulsory maintenance became established in this kingdom. By a statute made in the 12 R. 2. c. 7. the poor were restrained from wandering abroad, and were required to abide in the towns where they were born, or in other places within the *hundred*: within which districts they were *allowed* to beg.—By the 22 H. 8. c. 12. the justices were to distribute themselves into several *divisions*; within which divisions respectively they might *license* persons to beg.—By the 27 H. 8. c. 25. the several *hundreds, towns corporate, parishes, or hamlets*, were required to *sustain* the poor with such charitable voluntary alms, as that none of them might of necessity be compelled to go openly in begging; on pain that every person making default should forfeit 20s. a month. And the churchwardens, or other substantial inhabitants, were to make collections for them with boxes on sundays, and otherwise by their discretions. And the minister was to take all opportunities to exhort and stir up the people to be liberal and bountiful.—By the 1 Ed. 6. c. 3. houses were to be provided for them by the devotion of good people, and *materials* to set them on *work*: And the minister, after the gospel every Sunday, was specially to exhort the parishioners to a liberal contribution.—By the 5 & 6 Ed. 6. c. 2. the collectors for the poor, on a certain Sunday in every year, immediately after divine service, were to *take down in writing*, what every person was willing to give weekly for the ensuing year; and if any should be obstinate and refuse to give, the minister was gently to exhort him; if he still refused, the minister was to certify such refusal to the *bishop* of the diocese; and the bishop was to send for him, to induce and persuade him by charitable ways and means, and so according to his discretion *to take order for the reformation thereof*.—By the 5 El. c. 3. If he stood out against the bishop's exhortation; the bishop was to certify the same to the *justices* in sessions, and *bind him over* to appear there: And the justices at the said sessions were again gently to move and persuade him; and finally, if he would not be persuaded, then they were to *assess* him what they thought reasonable towards the relief of the poor; and in case of refusal, were to commit him till paid.—By the 14 El. c. 5. power was given to the justices to lay a *general assessment*.

session. And this hath continued ever since. For the statute of the 43 *El. c. 2.* is but a re-enacting of former provisions, with very little alteration; as followeth: *viz.*

Making a rate.

I. The churchwardens and overseers of the poor of every parish, or the greater part of them, shall raise weekly or otherwise (by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal mines, or saleable underwoods in the said parish) a convenient stock of flax, hemp, wool, thread, iron, and other ware and stuff, to set the poor on work; and also competent sums for the necessary relief of the lame, impotent, old, blind, and such other among them being poor as are not able to work, and also for the putting out poor children apprentices. 43 *El. c. 2. s. 1.*

The churchwardens and overseers] *H. 2 An. Tawney's case.* The concurrence of the inhabitants in making a rate, is not at all necessary; for by these words the churchwardens and overseers may make one without them. *L. Raym. 1013. 2 Salk. 531.*

Shall raise] And if they refuse to make a rate, the court of king's bench will grant a *mandamus* to compel them. And upon such a *mandamus*, the churchwardens and overseers having returned that they had made a rate, and that the rate had been quashed on the appeal, and the sessions had ordered them to make a new rate, which they had already done and collected the money thereon, this was held to be a good return. *K. and Wincanton.*

But the court will not grant a *mandamus* to make an *equal rate*; because it is to be presumed the overseers will do justice, and if they do not, there is a proper remedy by appeal to the sessions. (*K. and Barnstaple.*) 2 *Barnard. 457.*

Weekly or otherwise by taxation] *T. 19 G. 2. K.* and the churchwardens of *Weobly.* The court refused to grant a *mandamus*, directing to insert particular persons in the poor rate, upon affidavits of their sufficiency, and being left out to prevent their having votes for parliament men; for that the remedy was by appeal, and this court never went further, than to oblige the making the rate, without meddling with the question, who is to be put in or left out; of which the parish officers are the proper judges, subject to an appeal. *Str. 1259.*

By taxation] By this statute the taxation ought to be equal; and therefore ought to be continually altered as circumstances alter. 2 Salk. 526.

M. 12 W. K. and Audly. A rate was agreed on in 1665, by the inhabitants of *Audly*, which had been followed ever since till the last year, when a new rate was made. On appeal to the sessions, the new rate was quashed, and the old one ordered to stand. By *Holt Ch. J.* The old rate, however just at first, may be unequal now, and therefore the justices cannot make a standing rate, for lands may be improved. 2 Salk. 526.

H. 2 G. K. and Clerkenwell. An order was quashed, which was made to confirm a poor rate, which rate was made according to the land tax: Objected, that this taxation was not equal, because the personal estate in the publick funds is not chargeable to the land tax, but it is to the poor: And by the whole court this rate for that reason was set aside. Fol. 12.

The form of which rate or taxation may be thus:

AN *assessment for the necessary relief of the poor, and for the other purposes in the several acts of parliament mentioned relating to the poor, for the parish of ——— in the county of ——— made and assessed the ——— day of ——— being the first rate at 6d. in the pound for the present year ———*

					<i>l.</i>	<i>s.</i>	<i>d.</i>
A. B.	—	—	—	—	0	3	0
C. D.	—	—	—	—	0	0	9
E. F.	—	—	—	—	0	2	6

And so forth.

Assessors, A. B. }
 C. D. } Churchwardens.
 E. F. }
 G. H. } Overseers of the poor.

Of every inhabitant] Where persons shall come into, or occupy any premises, out of which any other person assessed shall be removed, or which at the time of making such rate was unoccupied, then every person so removing from, or coming into, or occupying the same, shall be liable to pay such rate, in proportion to the time that such person occupied the same respectively, under the like penalty of distress, as if such person so removing had not removed, or the person coming in or occupying had been originally

originally assessed in such rate; which proportion, in case of dispute, shall be ascertained by two justices. 17 G. 2. c. 38. s. 12.

Of every inhabitant, parson, vicar, and other] Under these words seems to be included the taxation of personal estates; and real estates are charged by the words next after.

And when goods or personal estate are rated, it ought to be done in the same proportion as lands are taxed, namely, every 100l. at the rate of 5l. a year, or other reasonable interest. *Read. Poor.*

Every inhabitant—and every occupier of lands, &c.] A person who hath lands in his occupation, and a stock of goods and wares besides, as a draper, grocer, and the like, may be taxed for both, but not for such stock or goods with which he uses to manure his lands. *Read. Poor. L. Raym. 1280.*

Stock in trade, and the house wherein the stock is kept, may be both rated towards the relief of the poor, and this shall not be a double tax; but if the land be taxed, the stock upon it cannot be taxed also, for this will be double. *Vin. Poor. E. 8.*

On a motion to confirm a tax laid by the justices on the toll of a corporation, *Hale Ch. J.* said, that on a reference to him by both parties, he was of opinion that the toll was not exempted, but chargeable, though part of it was to maintain the mayor. 3 *Keb. 540.*

It hath been resolved, that *ground rents* are liable to the poor rate. *Comb. 62.*

The overseer of *Stoke Nayland* in *Suffolk* made a rate, in which he charged the *quit rents* of several manors within the parish; which rate the justices refused to sign, because the quit rents ought not to be taxed: Whereupon the overseer, on application to the king's bench, obtained a rule to enforce the justices to sign it; which was strongly opposed, because no instance could be given that ever the quit rents were charged: but the court ordered the rate to be signed, and a warrant to distrain; so that if any person thought himself aggrieved, he might replevy, and the matter in law be brought in question. *Carth. 14. M. 3 Ja. 2.*

In another like case, *Eyre J.* said, that a quit rent is not taxable to the poor, for the tax ought to be laid on the occupier: But *Holt Ch. J.* said, it was otherwise ruled in the case of one *Williams* of *Suffolk*. *Comb. 264. T. 6 W.*

Occupier]

Occupier] The farmer or occupier shall pay this tax, and not the landlord, who is never to be taxed for his rent; for then the landlord would pay twice: but if he be possessed of a sum of money, or other personal estate, he may be taxed for that. *L. Raym.* 1280. *Dalt.* 165.

And the reason why the occupier is to be so charged is, that the poor rate is not a charge upon the land, but upon the occupier in respect of the land. *Fitz-Gib.* 297. *Cafe* and *Stephens*.

M. 11 G. Theed and Starkey. The lessor covenants with the lessee, to pay all taxes on the lands demised. The lessee brought an action of covenant, and assigned for breach the not paying of the rates to the church and poor. Upon demurrer it was objected, that those rates are personal charges, and not on the land: And for that reason the defendant had judgment. *8 Mod.* 314.

Occupier of lands, houses] *E. 1 An.* By *Holt Ch. J.* Hospital lands are chargeable to the poor, as well as others; for no man, by appropriating his lands to an hospital, can discharge or exempt them from taxes to which they were subject before, and throw a greater burthen upon his neighbours. *2 Salk.* 527.

But with respect to the hospital it self, it was determined, in the case of *St Luke's* hospital for lunaticks, *M. 1 G. 3.* that the said hospital was not chargeable, and that in general no hospital is so, excepting only those parts of them which are inhabited by the officers belonging to the hospital, as the chaplain, physician, and the like, in *Chelsea* hospital; and these apartments are to be rated as single tenements, of which the said officers are the occupiers. The reason why the apartments of the sick or mad persons are not to be rated is, that there are no persons who can be said to be the occupiers of them. For it would be absurd to call the poor objects so with respect to this purpose; and the lessees of the hospital in trust for the charitable purposes to which it is applied, cannot with any propriety be considered as the occupiers of it; nor, lastly, can the servants of the hospital, who attend there for their livelihood: And no other persons (said *Lord Mansfield Ch. J.*) can with any shadow of reason be considered as the occupiers thereof.

Tithes] *H. 4 G. K. and Turner.* The defendant being assessed towards the poor rate for his tithes as vicar, appealed to the sessions, where he is absolutely discharged. But by the court, As vicar he is chargeable by the *43 El.*

and the sessions hath only power to moderate, but not discharge. And the order of sessions was quashed. *Str.* 77.

And a parson who lets each parishioner his own tithes, is properly the occupier, and ought to be rated. *Vin. Poor. F. 4.*

But if a parson makes a lease of the tithes to one person, who afterwards lets the same to each parishioner, there the lessee is the occupier, and ought to be taxed. So if a man has a wood, or standing corn, and sells the same standing; the vender is the occupier, and shall be taxed. *8 Mod. 61.*

T. 8 G. K. and the inhabitants of *Lambeth*. The parson lets his tithes to farm; and the farmer agrees with the tenant of the land, that in consideration of his paying so much, he shall retain the tithe, and gather in the whole crop without dividing: and which of the two is chargeable to the poor rate, as occupier of the tithes, was the question. And the sessions discharge the lessee of the parson, and tax the tenant of the land. But by the court, The order must be quashed. The farmer of the tithes is *prima facie* liable to the poor rate, and therefore unless he can throw that charge over upon another, the tax must be made upon him. The tenant of the land in this case can never be said to be the occupier of the tithes; for he is either a person who buys the tithes, or else he is to be taken as only excused from paying any; and no body can say, but that though the parson thinks fit to excuse a parishioner, he will still remain in point of law the occupier of the tithes. This agreement being only by parol, cannot enure as an under lease of a thing that lies only in grant. Suppose it was the case of underwoods, which are sold standing, and the vendee grubs them up; can it be imagined, that makes him the occupier; or suppose the tenant sells the whole crop standing, will that make him less the occupier of the land? If it should, it would be impossible for the officers of the parish to know whom to charge. We must take this tenant of the land to be like any other buyer of the tithes, since he has no more title to them than any stranger whatsoever; and when the parson or his farmer receives a sum of money in lieu of tithe, that is in law a receipt of the tithe; with this only difference, that it is not tithe in kind. In the case of a composition (as this is) or a *modus*, it was never thought but that the parson was chargeable as occupier of the tithe: therefore there being no colour to charge the
tenant

tenant of the land, the order of sessions must be quashed.
Str. 525.

Coal mines or saleable underwoods] That is, proportioning them to an annual benefit. *Dalt.* 165.

In the case of the governor and company for smelting down lead, against *Richardson* and others, *M. 3 G. 3.* a point was reserved before Mr. Justice Bathurst at Carlisle assizes 1761, which was thus: The defendant had distrained for a poor rate assessed on the occupiers of the *lead* mines lying in the parish of *Alston*; upon which they brought this action. The case states, that the plaintiffs were lessees from Greenwich hospital; that they worked the mine, but did not live in the parish of *Alston*; that the profits of the hospital that year amounted to 1900 l, but those to the plaintiffs the lessees, were quite precarious and uncertain, and that some years they gained nothing; that no lead mines had ever been assessed, except in an instance or two since making this distress. In easter term 1762, this matter was argued by Mr. Clayton for the plaintiffs, and Mr. Yates for the defendant; and the court desired to be informed as to the practice of rating coal mines. In the term following, it was argued again, by Sir Fletcher Norton, solicitor general, for the plaintiffs, and Mr. Moreton for the defendant; and the court was informed, that in fact none of these sorts of mines had ever till lately been rated; and that even *coal mines* are not usually rated, except in cases where they are let on leases, and an annual rent reserved. — By lord Mansfield chief justice: The question is no more than this; Whether a lessee of lead mines, whereon no rent is reserved, other than a certain proportion of the oar to be raised, is rateable to the poor under the 43 *Eliz.* Now nothing can be clearer, than that these mines are not within the *letter* of the statute; for the legislature could never intend by the word *coal mines* to comprehend other species of mines. If they had meant to include them, they would either have enumerated them, or used the general word *mines*. So that the expression *coal mines* expressly excludes mines of any other sort, as much as if they had been excepted. And there was a very good ground of exempting them; as from the nature of working them they are liable to more hazard and expence than coal mines are. And at that time, all copper, lead, and tin mines, in Derbyshire, Cornwall, and Mendip in Somersetshire (which are the only counties where works of that kind were then esta-

blished) were governed by particular laws; whereby any stranger conforming to the ceremonies thereby required, was at liberty to work those mines, without any reward to the owner of the soil. And as all these undertakings were attended with infinite hazard and expence, and often ruined the projectors; it is no improbable conjecture, that the legislature meant for this reason, and in order to encourage them to proceed in undertakings of this publick utility, to exempt them from any other burden or imposition than those that the miners law had imposed. Indeed if a man has taken a lease of land, with privilege to dig for mines, he may be rated for the land: But that is not the present case. And where the legislature have not imposed a tax, this court cannot do it by construction. For example, the fees of a physician or lawyer are not made liable by the act, and therefore cannot be rated. Upon the whole, as here might be a very good reason for not making these mines liable, which is fortified by usage, and they are not within the letter of the act, I am clear they are not rateable.—Mr. justice Denison was of the same opinion.—By Mr. justice Wilmot: There is a material difference between coals and other mineral works. Coals are easily found; but a vast deal of time and money is often spent in discovering other mines. The legislature therefore considered, how dangerous it would be to discourage these kinds of adventurers, by subjecting them to a tax. Another thing which convinces me, that the legislature meant only to include coal mines is, that in the statute of 31 *El. c. 7.* concerning cottages, they have used the words *coal mines and all other mineral works*; which plainly shews, they never understood that coal mines would comprehend other sorts of mines.

In the said parish] A man having lands in other parishes than where he lives, the same being in lease or not in lease, he is to be taxed in the parish where he lives, according to his visible estate there, and not for his lands or rent in another parish. *Dalt. 165.*

For the taxation ought to be made upon the inhabitants and occupiers of lands within the parish, according to the visible estates and possessions, real and personal, which they have and enjoy within the parish, without regard to any estate which they have elsewhere. 2 *Bulstr. 354.*

And by the 17 *G. 2. c. 37.* Where there shall be any dispute in what parish or place improved wastes, and drained and improved marsh lands lie, and ought to be rated; the

the occupiers of such lands, or houses built thereon, tithes arising therefrom, mines therein, and saleable underwoods, shall be rated to the relief of the poor, and to all other parish rates, within such parish and place which lies nearest to such lands; and if on application to the officers of such parish or place to have the same assessed, any dispute shall arise, the justices at the next sessions after such application made, and after notice given to the officers of the several parishes and places adjoining to such lands, and to all others interested therein, may hear and determine the same on the appeal of any person interested, and may cause the same to be equally assessed, whose determination therein shall be final. But this shall not determine the boundaries of any parish or place, other than for the purpose of rating such lands to the relief of the poor, and other parochial rates. *s. 1. 2.*

2. By the aforesaid statute of the 43rd *El.* the said rate and taxation shall be made, *with the consent of two justices, one whereof is of the quorum, dwelling in or near the parish or division.* *s. 1.* Allowance of the rate by the justices.

And this consent is usually given, by the justices signing the same, with their allowance thereupon, thus:

WE two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, do consent unto and allow of this assessment: Witness our hands the— day of—

J. P.
K. P.

But this consent is to be understood of two justices out of sessions; for the sessions have no original power to order an assessment to be made, but only if it come before them by way of appeal: for in such case the party would be deprived of the benefit of appealing. *L. Raym. 798.*

And if the justices refuse to sign and allow the rate, the court of king's bench will grant a *mandamus* to compel them.

M. 7 G. K. and the justices of *Dorchester*. A *mandamus* issued to the justices to sign a poor rate made by the churchwardens and overseers. Before the return a motion was made to supersede it, for several objections to the fairness of the rate; and that this would be speedier and better for the poor, than to reserve the debate of them for a formal return. But by the court, The two justices are necessary to sign the rate only by way of form; for it is

the churchwardens and overseers that have the power of making it; and whether it be a fair rate or not, is proper for the jurisdiction of the sessions, and was never intended for our examination. The *superfedeas* being denied, the justices returned, that they could not allow the rate, it not being a just and proper rate: and the court having before given their opinion of this upon the motion, they resented this usage so far, that they quashed the return, and ordered an attachment against the justices, who thereupon submitted, and returned that they had allowed the rate. Str. 393.

Rate to be published.

3. The churchwardens and overseers shall cause publick notice to be given in the church, of every rate for relief of the poor, allowed by the justices, the next sunday after such allowance; and no rate shall be reputed sufficient to be collected, till after such notice given. 17 G. 2. c. 3. s. 1.

Any person may inspect the same.

4. And they shall permit any inhabitant to inspect such rate at all seasonable times, paying 1s. and shall give copies on demand, being paid 6d. for every 24 names. 17 G. 2. c. 3. s. 6.

Appeal against the rate.

And if any churchwarden or overseer shall not permit any inhabitant to inspect, or refuse to give copies as aforesaid, he shall forfeit 20l. to the party grieved. s. 3.

5. If any person shall be aggrieved by any assessment, or shall have any material objection to any person's being put in or left out of such assessment, or to the sum charged on any person or persons therein; he may, giving reasonable notice to the churchwardens or overseers, appeal to the next sessions; but if reasonable notice be not given, then they shall adjourn the appeal to the next quarter sessions after. 17 G. 2. c. 38. s. 4.

And on all appeals from rates, the justices shall amend the same, in such manner only as shall be necessary for giving relief, without altering such rates, with respect to other persons mentioned in the same; but if upon an appeal from the whole rate, it shall be found necessary to set aside the same, then they shall order a new rate to be made. id. s. 6.

And the court may award costs to either party, as in cases of settlement by the 8 & 9 W. id. s. 4.

After appeal, rates to be entered in a book.

6. True copies of the rates shall be entered in a book, by the churchwardens and overseers, within 14 days after all appeals from such rates are determined; and they shall attest the same, by putting their names thereto; and all such books shall be kept by the churchwardens and overseers for the time being, whereto all persons liable to be assessed may freely resort, and shall be delivered over from time to time, to the new churchwardens and overseers, as soon as they enter into their offices, to be preserved

preserved and produced at the sessions when any appeal is to be heard. 17 G. 2. c. 38. f. 13.

7. It shall be lawful as well for the present as subsequent churchwardens and overseers, or any of them, by warrant from any two such justices, one whereof is of the quorum, to levy the said sums, and all arrearages, of every one that shall refuse to contribute according as they shall be assessed, by distress and sale.

Rate to be levied by distress.

43 El. c. 2. f. 4.

And by the 17 G. 2. c. 38. The goods of any person assessed and refusing to pay, may be levied by warrant of distress, in any part of the county; and if sufficient distress cannot be found within the county, on oath made thereof before a justice of any other county (which oath shall be certified in the warrant) the goods may be levied in such other county or precinct, by virtue of such warrant and certificate; and if any person shall be aggrieved by such distress, he may appeal to the next sessions for the county or precinct where the assessment was made. f. 7.

But by Holt Ch. J. in the case of Tracey and Talbot, T. 3 An. The rate cannot be distrained for by virtue of a general warrant made before the rate; but there ought to be a special warrant on purpose. 2 Salk. 532. That is to say, the non-feasance of the party shall not be left to the judgment of the officer, who may out of private resentment sell his neighbour's goods without sufficient cause; but oath of the refusal must be made before the justices. And it is reasonable that the party should be heard in his defence; for he may shew cause variously why a distress should not be granted; as, that the rate was not regularly allowed, or was not published in the church, or that he had given notice of appeal, or that no demand or refusal had been made, and the like.

The form of the summons in which case may be this:

Westmorland. § To A. O. of the parish of——in
2 the said county, yeoman.

WE whose names are hereunto set and seals affixed, two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, do hereby summon you personally to appear before us at the house of——in——in the said county, on——the——day of——at the hour of——in the forenoon of the same day, to shew cause why you refuse to pay the rate or assessment made for the relief of the poor of the said parish for this present year; otherwise we shall proceed as if you had appeared. Given under our hands and seals the——day of——in the year of our lord——

And then the warrant of distress thereupon may be thus :

Westmorland. } To the churchwardens and overseers of
the poor of the parish of _____ in
the said county.

WHEREAS in and by a rate and assessment made, assessed, allowed, and published, according to the statutes in that case made and provided, A. O. an inhabitant and occupier of an house in the said parish of _____ was duly rated and assessed for and towards the necessary relief of the poor of the said parish for this present year the sum of 3s. And whereas it duly appeareth unto us, two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, as well upon the oath of O. P. overseer of the poor of the said parish, as otherwise, that the said sum of 3s. hath been lawfully demanded of the said A. O. and that the said A. O. hath refused and doth refuse to pay the same; And whereas the said A. O. having appeared before us in pursuance of our summons for that purpose, hath not shewed to us any sufficient cause why the same should not be paid: [Or, And whereas it hath been duly proved to us upon oath, that the said A. O. hath been duly summoned to appear before us the said justices, to shew cause why the same should not be paid, but he the said A. O. hath neglected to appear according to such summons:] These are therefore to require you forthwith to make distress of the goods and chattels of him the said A. O. And if within the space of [four] days next after such distress by you taken, the said sum, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you detain the said sum of _____ and also your reasonable charges of taking, keeping, and selling the said distress; rendring to him the said A. O. the overplus on demand. And if no such distress can be made, that then you certify the same unto us, to the end that such further proceedings may be had therein, as to law doth appertain. Given under our hands and seals this _____ day of _____.

And where any distress shall be made, for money justly due for relief of the poor, the distress itself shall not be deemed unlawful, nor the parties making it be deemed trespassers, for any defect or want of form in the warrant

for the appointment of overseers, or in the rate, or in the warrant of distress thereupon; nor shall the parties distraining be deemed trespassers *ab initio*, on account of any irregularity, which shall be afterwards done by the parties distraining; but the party aggrieved by such irregularity, may recover full satisfaction for the special damage, and no more, in an action of trespass, or on the case. But where the plaintiff shall recover in such action, he shall be paid his full costs. But no plaintiff shall recover in any action, for any such irregularity, if tender of amends hath been made by the party distraining, before such action brought. 17 G. 2. c. 38. s. 8, 9, 10.

8. In defect of such distress, it shall be lawful for two such justices to commit such person to the common gaol, there to remain without bail or mainprize, until payment of the same. Commitment for want of distress.

43 El. c. 2. s. 4.

9. And if any person shall neglect to pay to such overseers, the succeeding overseers shall levy the arrears, and shall reimburse their predecessors the sums which are allowed to be due to them in their accounts. 17 G. 2. c. 38. s. 11. Arrears to be levied by the succeeding overseers.

10. E. 5 G. K. and Uttrexeter. Upon great debate, Certiorari. and search after precedents, it was held, that a *certiorari* would not lie to remove the poor rate itself, the remedy being to appeal, or by action when a distress is taken, which will answer all the ends of justice in coming at an equal rate; whereas if the rate itself should be required to be sent up, great inconveniences and delays would follow. Str. 932. Cases of S. 317.

E. 7 G. 2. K. and justices of Salop. The true objection against a *certiorari* is, that if rates were removable, the poor might be starved whilst the rates were depending; and therefore the court, from the great inconvenience that would attend the removal of rates, have refused to do it. Sess. C. V. 1. 201. Str. 975.

ii. Taxing others in aid.

1. If the said justices do perceive, that the inhabitants of any parish are not able to levy among themselves sufficient sums Hundred contributory. for the purposes aforesaid, then the said two justices (1 Q.) shall tax, rate, and assess as aforesaid any other of other parishes, or out of any parish within the hundred, to pay such sums to the churchwardens and overseers of the said poor parish, for the said purposes, as the said justices shall think fit. 43 El. c. 2. s. 3.

That

That the inhabitants of any parish are not able] H. 8 An. Order of two justices: The case was thus: There were two villis in one parish, and the justices recite in their order, that one of the villis was very rich, and the other very poor; and further, that the vill which was rich, did not pay half so much to the poor, as the poor vill did. Objected, 1. One vill ought not to contribute to another, because the statute mentions parishes only. 2. The reason given for charging the rich vill to contribute to the poor vill is uncertain; viz. because they do not pay half so much as the poor vill does, without shewing that either vill pays any thing to the poor. By the court; As to the first objection, surely this will come within the equity of the statute, though the statute only makes mention of *parishes*; and it is highly reasonable, that one vill should contribute to another in the same parish. But this order must be quashed on the second objection, for the uncertainty. *Foley* 25.

Then the said two justices] T. 2 J. 2. K. and Griesly. The sessions rated the adjacent parishes: Quashed; because the statute appoints it to be done by the two justices, and hereby they prevent an appeal. *Cases of S.* 259.

The said two justices shall tax, rate, and assess] T. 12 G. 2. *St Mary's and St Peter and Paul's in Marlborough.* Two justices order the churchwardens and overseers of *St Peter and Paul's* to assess, raise, and levy a sum towards the maintenance of the poor of *St Mary's*. But the order was quashed by the court; because the justices had delegated their power to the churchwardens and overseers, whereas by the statute they themselves are to make the rate on all, or on particular persons. *Str.* 1114.

In this case, a *mandamus* was moved for to the justices, to make a rate for the support of the poor of the parish of *St Mary's*; which was opposed, because the parish officers ought to make the rate, and the justices are only to sign it. To which it was answered, that this motion was grounded on this clause of the statute; and thereupon a *mandamus* was granted, directed to the justices; and as this is a matter of right, they ought to make a return. *Vin. Poor.* vol. 16. p. 416.

And the justices are to make the taxation, and leave it to the churchwardens and overseers to levy it. 2 *Salk.* 480.

Any other of other parishes] M. 32 C. 2. Resolved, that the justices may impose the charge upon any of the inhabitants

bitants of the neighbouring parishes, and are not obliged to put a general tax upon the whole parish. *Comb.* 309. 1 *Ventr.* 350.

T. 12 *G. K.* and *Boroughfen.* There was a taxation of several persons in a parish: Objected, that it should be of all the persons in a particular place or parish. The court thought it unreasonable, that several persons in a parish should be charged, and not all, but that the words of the act are very strong; and did not quash the order for this objection. *Foley* 29.

Within the hundred] *T.* 9 *An.* *Boroughfen* and *St John's.* Motion to quash an order of two justices; for that it doth not appear upon the order, that the parish which is charged to aid the parish that is not able to maintain its own poor, is within the same hundred. And quashed by the whole court. *Foley* 27.

H. 8 *An.* Motion to quash an order of two justices, which was made to assess the parishes of *St Stephen* and *St Mary Magdalen* in *Norwich*, in aid of the parish of *St Benedict*, which was not able to maintain its own poor. Objection, These parishes are not in the same hundred; it is in *Norwich* where there is no hundred, so the justices have no jurisdiction. And by *Holt Ch. J.* The order must be quashed. *Foley* 31.

E. 31 *G. 2. K.* and the tything of *Milland.* Two justices tax the inhabitants of the tything of *Milland*, in aid of the parish of *St Peter's Cheesbill*, in the same county. The sessions confirm the order, setting forth, that the tything of *Milland*, and the parish of *St Peter's Cheesbill*, both lie in the same liberty of the *foke* where the said parish lies. On referring it back to the sessions to be more particularly stated, it appeared (substantially) to be a hundred, tho' called by another name. And the court held, they were not restrained to the particular word *hundred*, but it is sufficient if it be signified by any word equivalent. And the orders were affirmed. *Burrow.* 576.

As the said justices shall think fit] *E.* 12 *G. K.* and *St Mary's* in *Marlborough.* An order was made for a neighbouring parish to contribute, *so long as we the said justices shall think fit.* But by the court, It must be quashed: for the discretion that is left in the justices, is as to the *quantum*, and not as to the duration of the contribution. *Str.* 700.

M. 6 *W. K.* and *Knightly.* A sum in gross was taxed upon a neighbouring parish, for a whole year; which was objected

objected to as unreasonable, because their ability may change: nevertheless the order was confirmed. *Comb.* 309.

T. 6 G. K. and Telfcombe. By the court, The order for the contributory parish to make a rate at 6 d. in the pound is ill for incertainty: it should have been, to raise such a sum certain. *Quashed. Str.* 314.

T. 12 G. 2. Case of the parish of *St Peter and Paul* in *Marlborough*. Two justices, reciting the inability of the parish of *St Mary* to maintain its own poor, order the parish of *St Peter and Paul* to contribute 60l. for the maintenance of the poor of the other parish. And objection being made to their ordering such a gross sum, the court held it in that respect to be well. *Str.* 1114.

County contribu-
tory.

2. *And if the said hundred shall not be thought by the said justices able and fit to relieve the said several parishes not able to provide for themselves, as aforesaid, then the justices at their general quarter sessions shall rate and assess as aforesaid, any other of other parishes, or out of any parish within the county.* 43 *El. c. 2. f. 3.*

T. 3 G. K. and Percivall. Order of sessions, reciting that the parish is not able to maintain its own poor, nor any other parish within the hundred to contribute, therefore the justices at the sessions tax other parishes in another hundred within the same county. It was moved to quash it, and insisted that the statute gives no authority to the sessions to charge people out of the hundred, till two justices have inquired whether any parish in the hundred can contribute: The first application to be to two justices, and the second to the sessions. *Parker Ch. J.* I do not see, to what purpose it would be, for the two justices to make an order, only to adjudge that no parish within the hundred is able to contribute. We will presume the sessions is satisfied of that, and if the two justices should make such an adjudication, yet the sessions must inquire into the truth of it; and if no order appears, which charges any parish within the hundred, it is a sufficient ground for the sessions to act. If the two justices had charged any parish within the hundred, that would have stopped the sessions from proceeding; and the sufficiency of the hundred depends on this, whether two justices have ever charged the hundred. — *If the said hundred shall not be thought by the said justices able,*—that is, if the two justices do not adjudge it so. If two justices should adjudge the hundred not able, yet if other two justices adjudge the contrary, their charge would be good, and

and the sessions be ousted of their jurisdiction, notwithstanding the first adjudication. *Eyre J.* Here are two jurisdictions, that of the two justices, and that of the sessions, and both are original jurisdictions. They are different in all respects, for the two justices have no power out of the hundred, nor the sessions within it. There need be no appeal from an adjudication of two justices, for that would be to appeal from a nullity. And the order was confirmed. *Str.* 56.

iii. *How far parents and children are liable to maintain each other.*

1. *The father and grandfather, mother and grandmother, and children of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of a sufficient ability, shall at their own charges relieve and maintain every such poor person, in that manner, and according to that rate, as by the justices of that county where such sufficient persons dwell in their sessions shall be assessed; on pain of 20s. a month.* Parents and children mutually liable.
43 *El. c. 2. s. 7.*

Which penalty shall go to the use of the poor of the same parish, and be levied by some or one of the churchwardens or overseers, by warrant from two such justices (1 Q.) by distress; or in defect thereof, any two such justices may commit the offender to the common gaol, there to remain without bail or mainprize, till the said forfeitures shall be paid. s. 2. 11.

Father and mother.] T. 9 An. 2. and Clentham. It was moved to quash an order upon the father in law, to maintain his wife's daughter, his wife being dead. By the whole court; The husband ought to provide for the daughter in law during the wife's life, in the right of his wife; but when the wife dies, the relation is dissolved, and he is not by any means obliged to provide for the daughter in law after her mother's death. *Foley* 39.

E. 10 An. 2. and St Botolph's Aldgate. The single question was, Whether the husband shall be chargeable to maintain his wife's children by a former husband: And it was resolved, he was, during the wife's life, in her right; but not after. *Foley* 42.

There was an order upon the mother, who was married to a second husband, to maintain her children which she had by the former husband: But by the court, a feme covert cannot be charged, but they ought to have charged her husband. *Foley* 44.

M. 7 G. 2. K. and Dempson. It was moved to quash an order upon the father to pay a certain sum weekly to his son's wife, his son having run away from her as soon as he married her, and she having had a child in the mean time. To this order two exceptions were taken: First, that it appears the son's wife was an adulteress; and therefore the husband himself would not have been bound to maintain her, much more the husband's father could not. To this it was answered, and allowed by the court, that whatever effect this act of the wife might have upon the husband, it could not have any upon the parish. Secondly, it was objected, that the statute extends only to natural relations, and for this purpose was cited the case of *K. and Munden* (hereafter following): And the court was of opinion that this objection was fatal, and that the act doth not extend to relations in law. 2 *Barnardist.* 329, 364. Note, Sir *John Strange* in his report of this case says, that the order was for the father to maintain the son's wife, after a divorce *a mensa et thoro* for adultery. *Str.* 955.

Grandfather and grandmother] *M. 7 G. K. and Reeves.* The reputed grandfather or grandmother are not within the statute; for a bastard is *filius populi.* 2 *Bulstr.* 344.

H. 7 Cha. Gerard's case. If a man marries a grandmother, and has an estate with her in marriage; for this estate he shall be charged to be contributory towards the relief and maintenance of the grandchild, within the meaning of this statute: but otherwise it shall be, if he has not any estate or advancement by his marriage with her. By *Whitlocke* and *Croke* justices.—But by *Croke J.* He shall be charged with keeping the grandchild during the life of the grandmother his wife; and if she dies, he shall not be charged after her death. 2 *Bulstr.* 346.

But by *Holt Ch. J.* If the wife dies, he must maintain the grandchildren, though the relation be determined. And he said, that in *Gerard's case*, who married the grandmother of a poor person, though she died, and so the relation was determined, yet the statute was to be construed by equity, and that he was a grandfather within the statute. *Comb.* 321, 405.

But in the case in 2 *Bulstr.* 346. it does not appear that the grandmother was dead; nor is there any resolution, the judges differing in their opinions. *Vin. Poor.* A. vol. 16. pag. 417.

And though the father be living, yet if he be unable, the grandfather being of ability, may be compelled to keep the grandchild, and also to pay so much money as the justices shall think reasonable for the time past. *M. 6 An. 2. and Joyce. Vin. Poor. C. 3.*

And children] *T. 5 G. K. and Munden.* Order, reciting that *Munden* had a good fortune with his wife, and that her mother was poor, therefore he is ordered to provide for her. By *Pratt Ch. J.* The cases which have hitherto been, were either where the judges were divided, or the matter came not directly in question, or was only a case at the judge's chamber. It never came judicially before the whole court till now. And as it is *res integra*, on consideration we are all of opinion, that the son in law is not bound, either within the words or intent of the statute, which provides only for natural parents. By the law of nature, a man was bound to take care of his own father and mother. But there being no temporal obligation to enforce that law of nature, it was found necessary to establish it by act of parliament, and that can be extended no farther than the law of nature went before, and the law of nature doth not reach to this case. And the order must be quashed. *Str. 190.* But it doth not appear from this report, whether the wife was alive or dead: Perhaps she might be dead, and thereby the relation determined.

In the case of *Walton and Spark, E. 7 W. Holt Ch. J.* said, that the word *children* in the statute extends to grandchildren; because there is the same natural affection. *Cases of S. 210.*

But no case hath occurred, wherein the same hath been judicially determined. And perhaps there may be some doubt as to this point. Natural affection descends more strongly, than it ascends. And it is observable, that whereas the statute of the 39 *El. c. 3.* did only enact, that *parents* and *children* should mutually maintain each other, this statute of the 43 *El.* enlarging this branch, extends it to *grandfathers* and *grandmothers*, but doth not specify *grandchildren*; by which it may seem, that the parliament did not intend, that the obligation should extend to them.

Of every poor, old, blind, lame, and impotent person, or other poor person not able to work] *M. 13 W. St Andrews Undershaft* and *Jacob Mendez de Breta.* The defendant being a jew, had an only daughter, who was converted from judaism, and embraced christianity. Whereupon
the

the defendant turned her out of doors, and refused to allow her any maintenance. On complaint to the sessions, they reciting that she was the daughter of the defendant, and that he was a man able to maintain her, made an order that the defendant (being very rich) should allow her 20s. a month. But because they did not alledge that she was poor, or likely to become chargeable, the order was quashed. *L. Raym.* 699.

E. 1 G. K. and Gulley. It was moved to quash an order of sessions. The order set out, that one *Mary Gulley* was in a poor destitute condition, and that her father was able to maintain her, and therefore they make an order upon him to allow her 2s. 6d. a week, till further order. Objected, It did not appear that she was lame, blind, or unable to work; so that though she was in a destitute condition, it might be because she would not work: And upon this exception the court quashed the order of sessions. *Foley* 47.

Being of a sufficient ability] *H. 12 An. Q. and Hallifax.* Order for the father in law to pay so much a week to his daughter in law, was quashed, because it was not said that he was of a sufficient ability. *Cases of S.* 52.

In that manner, and according to that rate, as by the justices of that county where such sufficient persons dwell in their sessions shall be assessed] *E. 5 An. Jenkins's case.* An order of sessions was made, that the defendant should pay 2s. a week towards the support of his father, till that court should order the contrary. Which was held good; because it was indefinite, and no set time limited: and if an estate happened to fall to him, they might apply to the justices; otherwise, if a time was limited. *2 Salk.* 534.

By the justices of that county where such sufficient persons dwell] Therefore if the child live in the county of *Middlesex*, and be maintained by the parish there, and the grandfather lives in the county of *Suffolk*, the justices of *Middlesex* can make no order therein, but the justices of the county of *Suffolk* must make order. *2 Bulst.* 346.

In their sessions shall be assessed] *T. 9 An. Q. and Jones.* There was an order for the grandmother to take care of her grandchildren, and by the order they send the grandchildren to the grandmother. By the whole court, They cannot send the grandchildren to the grandmother; but the justices ought to have made a rate upon the grandmother of so much a week. *Foley* 41. 2

And

And it is said, that in the order of sessions it ought to appear, that the party to be relieved is become chargeable to the parish; for unless he be so, the parish has no ground of complaint. *Vin. Poor. C. 7. K. and Tripping.*

2. *Whereas sometimes men run away, leaving their wives and children, and sometimes women run away, leaving their children, upon the charge of the parish, although such persons have some estates which should ease the parish of their charge, in whole or in part; It shall be lawful for the churchwardens or overseers, where any such wife, child, or children shall be so left, on application to, and by warrant or order of two justices, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father, or mother, as such two justices shall order and direct, towards the discharge of the parish or place where such wife, child, or children are left, for the bringing up and providing for such wife, child, or children; which warrant or order being confirmed at the next quarter sessions, it shall be lawful for the justices there, to make an order for the churchwardens or overseers, to dispose of such goods or chattels by sale or otherwise, or so much of them, for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the said sessions, of his or her lands and tenements for the purposes aforesaid.* 5 G. c. 8. s. 1. Parents running away.

And the said churchwardens and overseers shall be accountable to the justices at the quarter sessions for all such money as they shall so receive. s. 2.

And further to compel husbands and parents to maintain their own families, the law hath also provided, that all persons running away out of their parishes, and leaving their families upon the parish, shall be deemed and suffer as incorrigible rogues. 7 J. c. 4. s. 8.

And if a person doth but threaten to run away, and leave his wife or children upon the parish; he shall, on conviction, before one justice by confession, or oath of one witness, be committed to the house of correction, for any time not exceeding one month. 17 G. 2. c. 5.

And by the 7 J. c. 4. If any man or woman shall threaten to run away and leave their families upon the parish, and the same be proved by two witnesses on oath before two justices of that division; the person so threatening shall be sent to the house of correction (unless he can put in sufficient sureties for the discharge of the parish) there to be dealt with as a sturdy and wandering rogue, and to be delivered at the sessions, and not otherwise. s. 8.

Form of an order to seize the goods, and receive the rents of the lands, of parents or husbands having run away.

Westmorland. } To the churchwardens and overseers of the poor of the parish of — in the said county.

WHEREAS it appears unto us whose names are hereunto set and seals affixed, two of his majesty's justices of the peace for the said county, as well upon the complaint and application of the churchwardens and overseers of the poor of the parish of — aforesaid, in the county aforesaid, as upon due proof upon oath before us made, that A. O. late of the parish of — aforesaid, in the county aforesaid, yeoman, hath gone away from his place of abode at — in the parish aforesaid, into some other county or place, and hath left — his wife, and — their children, upon the charge of the parish of — aforesaid, the place of their last legal settlement, and that the said A. O. hath some estate whereby to ease the said parish of their said charge, in whole or in part; We do hereby authorize and command you the said churchwardens and overseers of the poor of the parish of — aforesaid, to take and seize — and — and —, and to receive the annual rents and profits of the lands and tenements of him the said A. O. at — aforesaid, for and towards the discharge of the said parish, for the providing for and bringing up of his said wife and children: And with this warrant you are to appear, at the next quarter sessions of the peace to be holden for the said county, and certify then and there what you shall have done in the execution hereof. Given under our hands and seals, at — in the said county, the — day of — in the year —

FOR the further maintenance of the poor, there are many fines and forfeitures payable to their use; as for swearing, drunkenness, destroying the game, and in many other instances, which are to be found under their proper titles.

And also parts of wastes, woods, and pastures may be inclosed for the growth and preservation of timber and underwood for their relief; as is set forth under the title **Wood.**

V. Of the relief and ordering of the poor.

1. By the several statutes all along, the poor were to resort or be sent to their own parishes to be relieved; and there is no power given to the churchwardens and overseers, by any statute now in force, (except in the case of certificate persons, and of contracting as is herein after mentioned) to relieve any persons out of their own parish, much less any obligation upon them to exercise that part of their office out of their own jurisdiction.

Poor to be maintained within their own parishes.

And in the case of *Clypton* and *Ravistock*, E. 11 An. It was adjudged as follows: There was an order reciting, Whereas *John Saunderson* and his wife are last settled in *Clypton*; these are to order you the churchwardens of *Clypton*, to repair to the parish of *Ravistock*, and to relieve them, being so sick that they cannot be removed. By the court; The justices have no authority to send for officers out of another parish, but the parish where the poor reside are bound to maintain them as long as they continue with them. And by *Powell J.* although they be not parishioners, yet they are to be relieved till they are carried to their own parish. *Case of S. 49.*

2. By the 43 El. c. 2. The churchwardens and overseers, with the consent of two justices (1 Q.) shall take order from time to time, for setting to work the children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children; and for setting to work all such persons, married or unmarried, having no means to maintain them, and using no ordinary and daily trade; and for the necessary relief of the lame, impotent, old, blind, and such other among them being poor, and not able to work. s. 1.

Order to be taken therein.

And the said justices, or one of them, shall send to the house of correction, or common gaol, such as shall not employ themselves to work, being appointed thereunto as aforesaid. s. 4.

Poor, and not able to work] M. 3 G. K. and the inhabitants of *Higworth*. There was an order to pay 3s. weekly to a poor person, by the parish of *Higworth*, so long as he shall continue poor. It was objected, that by the statute it ought to appear that they are poor and impotent. *Parker Ch. J.* I favour these orders as much as I can, because no body takes care to draw them up for the poor. But it must be qualified. *Sir. 20.*

On the authority of this case, *E. 3 G. K. and Stoke-gurfey*, an order was quashed for the same fault. So, *E. 4 G. K. and Tipper*, an order to maintain a daughter-in-law. *id.*

For the necessary relief] *E. 1 G. 2. K. and Colbitch*. An order of sessions was made upon the overseers of this parish, that they should pay a surgeon his bill for curing certain poor under their care. The court said, that the sessions have no power to make such orders; and so quashed it. *1 Barnardist. 46.*

M. 6 G. 2. K. and Woodsterton. An order was made by two justices upon the officers of the parish of *Woodsterton*, for paying 5*l.* upon account of a poor inhabitant of that parish when he was in gaol, and likewise for paying a surgeon's bill that was due upon his account; which order was confirmed at the sessions. It was moved to quash these orders. And upon shewing cause, it was urged, that the justices have only power to order parish officers to relieve a poor inhabitant where it is fit he ought to be relieved. But in the present case, the parish officers have actually given the party relief. They employed a surgeon, and a nurse, to take care of him. The surgeon and nurse have a proper remedy by way of action against the officers; and the justices have no pretence to interfere in this matter. And the court were of opinion that these orders should be quashed. *2 Barnardist. 207, 247.*

Setting up trades.

3. By the 3 *C. c. 4. The churchwardens and overseers may, by the consent of two justices (1 Q.) within their respective limits, wherein shall be more justices than one; and where no more shall be than one, with the assent of that one justice, set up and use any trade, mystery or occupation, only for the setting on work and better relief of the poor. s. 22.*

Erecting cottages.

4. *The churchwardens and overseers, or the greater part of them, by the leave of the lord of the manor, whereof any waste or common within the parish is parcel, and on agreement with him made in writing, under his hand and seal; or otherwise, according to any order to be set down by the justices in sessions, by like leave and agreement of the lord in writing under his hand and seal, may build in fit and convenient places of habitation in such waste or common, at the charge of the parish, or otherwise of the hundred or county as aforesaid, to be rated and gathered in manner before expressed, convenient houses of dwelling for the said impotent poor; and may place inmates, or more families than one, in one cottage or house, notwithstanding the Statute of the 31 El. Which cottages, or places for inmates, shall*

shall not be employed for any other habitation, but only for impotent and poor of the same parish placed there by the churchwardens and overseers. 32 El. c. 2. s. 5.

5. It shall be lawful for the churchwardens and overseers, in any parish, township, or place, with the consent of the major part of the parishioners or inhabitants, in vestry, or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to purchase or hire any house or houses, in the same parish, township, or place, and to contract with any person or persons for the lodging, keeping, maintaining, and employing any or all such poor in their respective parishes, townships, or places, as shall desire to receive relief or collection, and there to keep, maintain, and employ all such poor persons, and take the benefit of the work, labour, and service of any such poor persons, who shall be kept or maintained in any such house or houses, for the better maintenance and relief of such poor persons, who shall be kept or maintained. And if any poor person shall refuse to be lodged, kept, or maintained, in such house or houses, he shall be put out of the parish book, and shall not be intitled to receive relief from the churchwardens and overseers. 9 G. c. 7. s. 4.

6. And where any parish or township shall be too small to purchase or hire such house or houses, it shall be lawful for two or more such parishes, townships, or places, with the consent of the major part of the parishioners or inhabitants of their respective parishes, townships, or places, in vestry or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, and with the approbation of any justice of the peace dwelling in or near any such parish, township, or place, signified under his band and seal, to unite in purchasing, hiring, or taking such house, for the lodging, keeping, and maintaining of the poor of the several parishes, townships, or places so uniting, and there to keep, maintain, and employ the poor of the respective parishes, townships, or places so uniting, and to take and have the benefit of the work, labour, or service of any poor there kept and maintained, for the better maintenance and relief of the poor there kept, maintained and employed; and if any poor in the respective parishes, townships, or places so uniting, shall refuse to be lodged, kept, and maintained in the house hired or taken for such uniting parishes, townships, or places, he shall be put out of the collection book, and not intitled to ask relief.

And it shall be lawful for the churchwardens and overseers of any parish, township, or place, with the consent of the major

part of the parishioners or inhabitants of the said parish, township, or place, where such house or houses shall be purchased or hired for the purposes aforesaid, in vestry or other parish or public meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to contract with the churchwardens and overseers of any other parish, township, or place, for the lodging, maintaining, or employing of any poor person or persons of such other parish, township, or place, as to them shall seem meet; and if any poor person of such other parish, township, or place, shall refuse to be lodged, maintained, and employed in such house or houses, he shall be put out of the collection book, and not be intitled to have relief: Provided, that no poor person, his apprentice, or child, shall acquire a settlement in the parish, town, or place, to which he shall be removed by virtue of this act; but his and their settlement shall be and remain, in such parish, town, or place, as it was before removal. 9 G. c. 7. f. 4.

Persons relieved
to be entered in a
book.

7. There shall be provided and kept in every parish, a book wherein the names of all persons who receive collection shall be registered, with the day and year when they were first admitted to have relief, and the occasion which brought them under that necessity: and yearly in Easter week, or as often as shall be thought convenient, the parishioners shall meet in the vestry or other usual place of meeting in the parish, before whom the book shall be produced, and all persons receiving collection to be called over, and the reasons of their taking relief examined, and a new list made and entered of such persons as they shall think fit and allow to receive collection. 3 W. c. 11. f. 11.

No others to be
relieved, but by
order of the jus-
tices,

8. And no other person shall be allowed to receive collection at the charge of the parish, but by authority under the hand of one justice residing within such parish, or (if none be there dwelling) in the parts near or next adjoining, or by order of the justices in sessions, except in cases of pestilential diseases, plague, or small-pox, for such families only as shall be therewith infected. 3 W. c. 11. f. 11.

And no justice shall order relief to any poor person, until oath be made before him of some matter, which he shall judge to be a reasonable cause for having such relief; and that the same person had by himself, or some other, applied for relief to the parishioners at some vestry or other public meeting, or to two of the overseers, and was by them refused to be relieved; and until such justice hath summoned two of the overseers to shew cause why such relief should not be given, and the person so summoned hath been heard or made default to appear. 9 G. c. 7. f. 1.

And

And the person whom such justice shall think fit to order to be relieved, shall be entred in such book, as one of those who is to receive collection, as long as the cause for such relief continues, and no longer. And no officer shall (except upon sudden and emergent occasions) bring to the account of the parish, any money he shall give to any poor person who is not registred in such book, as a person intitled to receive collection; on pain of 5*l.* by distress, by warrant of two justices, who shall have examined into and found him guilty of such offence; which said sum shall be applied to the use of the poor by direction of the justices. 9 G. c. 7. f. 2.

9. Moreover, Every such person as shall be upon the collection, and receive relief of any parish or place, and the wife and children of any such person cohabiting in the same house (such child only excepted, as shall be by the churchwardens and overseers permitted to live at home, in order to attend an impotent and helpless parent) shall upon the shoulder of the right sleeve of the uppermost garment, in an open and visible manner, wear a large Roman P, together with the first letter of the name of the parish or place, whereof such poor person is an inhabitant, cut either in red or blue cloth, as by the churchwardens and overseers shall be directed: And if any such poor person shall neglect or refuse to wear any such badge or mark, it shall be lawful for one justice to punish such offender, either by ordering his allowance to be abridged, suspended, or withdrawn, or otherwise by committing him to the house of correction, to be whipt and kept to hard labour, not exceeding 21 days; And if any churchwarden or overseer shall relieve any such poor person, not wearing such badge, and be thereof convicted on oath of one witness before one justice, he shall forfeit 20*s.* by distress, half to the informer and half to the poor. 8 & 9 W. c. 30. f. 2.

Persons relieved to be badged.

10. By the 24 G. 2. c. 40. No spirituous liquors shall be sold or used in any workhouse, or house of entertainment for parish poor; as is set forth more at large, in the article relating to spirituous liquors, under the title Excise.

Spirituous liquors not to be used in work-houses.

THE abovementioned statute of the 9 G. c. 7. hath been very beneficial in practice; but the matter seemeth at length to have been carried too far; the overseers in many places having found out a method, of contracting with some obnoxious person, of savage disposition, for the maintenance of their poor: not with any intention of the poor being better provided for, but to hang over them in *terrorem*, if they will not be satisfied with the pittance which the overseers think fit to allow them. And one such taskmaster oftentimes undertakes for the poor of se-

veral parishes or townships. But the justices have power, by with-holding their assent, to prevent any bad use being made of this kind of traffick.

Oath of a poor person wanting maintenance.

A. P. of ——— in the parish of ——— in the county of ——— maketh oath, that he is very poor and impotent, and not able to provide for himself and his family, and that on ——— last he did apply for relief to the parishioners of the said parish at a vestry (or other publick) meeting [or, to two of the overseers of the poor of the said parish] and was by them refused to be relieved.

A. P.

Taken and made before me one of his
majesty's justices of the peace for
the said county, the ——— day of

J. P.

Warrant thereupon to summon the overseers.

Westmorland. { To the constables of ——— in the parish
of ——— in the said county, and to
every of them.

WHEREAS A. P. of your parish hath this day made oath before me ——— one of his majesty's justices of the peace in and for the said county, that he the said A. P. is very poor and impotent, and not able to provide for himself and his family; and that he the said A. P. did on ——— last apply to the parishioners of your said parish at a vestry (or other publick) meeting [or, to A. B. and C. D. two of the overseers of the poor of the said parish] and was by them refused to be relieved: These are therefore to require you in his said majesty's name, to summon two of the overseers of the poor of the said parish, to appear before me on ——— next at the house of ——— in the said county, at the hour of ——— in the forenoon of the same day, to shew cause why relief should not be given to the said A. P. And be you then there with this precept, to certify what you shall have done in the execution hereof. Given under my hand and seal the ——— day of ——— in the ——— year ———

Order

Order for maintenance.

Westmorland. **W**HEREAS A. P. of— in the parish of— in the said county of— yeoman, hath made oath before me— one of his majesty's justices of the peace for the said county, that he the said A. P. is very poor and impotent, and not able to work; and that he the said A. P. did on— last apply for relief to the parishioners of the said parish of— at a vestry, (or, publick) meeting [or, to A. B. and C. D. two of the overseers of the poor of the said parish] and was by them refused to be relieved; And whereas A. B. and C. D. overseers of the poor of the said parish, have been duly summoned by me, to shew cause why relief should not be given to the said A. P. and have appeared before me in pursuance of such summons, but have not made any sufficient cause to appear as aforesaid [or, but have made default to appear before me according to such summons:] I do therefore hereby order the churchwardens and overseers of the poor of the said parish, or some of them, to pay unto the said A. P. the sum of— weekly and every week, for and towards his support and maintenance, until such time as they shall be otherwise ordered according to law to forbear the said allowance. Given under my hand and seal at— in the said county, the— day of— in the— year—.

Contract for maintenance.

AT a publick meeting of the inhabitants of the parish of— in the county of— for that purpose assembled, upon usual notice thereof first given; it is contracted by and with the consent of the major part of the said inhabitants so assembled as aforesaid, between A. B. and C. D. churchwardens, and E. F. and G. H. overseers of the poor of the said parish, of the one part, and A. M. of— in the said parish, yeoman, of the other part; That he the said A. M. shall and will during the space of one whole year to commence from— next ensuing, at his own proper costs and charges, in the house in which he now dwelleth, find, provide, and allow unto all such poor people, as shall be lawfully intitled to relief and maintenance from the said parish, and shall be brought unto him by the churchwardens or overseers of the poor aforesaid, or any of them, or by their or any of their successors for the time being, sufficient lodging, meat, drink, cloathing, employment, and other things necessary for their keeping and maintenance;

tenance: And that in consideration thereof, the said churchwardens and overseers of the poor, and their successors respectively, shall pay or cause to be paid to the said A. M. the sum of ——— in equal proportions ——— The said A. M. to have moreover and take unto himself the benefit of the said poor peoples work, labour, and service during the said term. In witness whereof the parties to these presents have hereunto set their hands, the ——— day of ———.

It may perhaps be requisite to insert a clause more particularly with respect to the article of *cloathing*; setting forth in what condition they shall go; and in what condition be delivered back again.

As also, if they shall *die*; who shall be at the expence of burying them, and the like.

As also, if they shall be *refractory* or ungovernable; who shall be at the charge of sending them to the house of correction, or otherwise reducing them to good behaviour.

And other clauses as there may be occasion.

If two parishes or townships shall join in such a contracting, it will be necessary to insert in the contract, the consent of a justice of the peace; as thus,

————— by and with the consent of the major part of the said inhabitants so assembled as aforesaid respectively, and also by and with the consent of J. P. esquire, one of his majesty's justices of the peace for the said county, dwelling in the said parish of ——— [or, near to the said parishes, or townships of] ———

And the assent of the said justice may be indorsed thereon, as follows;

I ——— esquire, one of his majesty's justices of the peace for the within mentioned county of ——— and dwelling in the within mentioned parish of ——— [or, near to the within mentioned parishes, or townships of ———] do consent unto, allow, and approve of the within written contract. Given under my hand and seal the ——— day of ———.

VI. Of the overseers account.

1. By the 43 El. c. 2. The churchwardens and overseers shall, within four days after the end of their year, and other overseers nominated, make and yield up to two justices (1 Q.) a true and perfect account of all sums by them received, or rated and assessed and not received, and also of such stock as shall

Account.

be

be in their hands, or in the hands of any of the poor to work, and of all other things concerning their office: And such sums of money as shall be in their hands, shall pay and deliver over to their successors: And the subsequent churchwardens or overseers, by warrant from two such justices, may levy by distress and sale of the offender's goods, the said sums or stock which shall be behind on any account to be made; and in defect of such distress, two such justices may commit him to the common gaol, there to remain without bail or mainprize, until payment of the said sum and stock: And also any such two justices may commit to the said prison, every one of the said churchwardens and overseers, which shall refuse to account, there to remain without bail or mainprize, until he have made a true account, and satisfied and paid so much as upon the said account shall be remaining in his hands. s. 2, 4.

And by the 17 G. 2. c. 38. It is enacted as follows: The churchwardens and overseers shall yearly, within fourteen days after other overseers shall be appointed, deliver in to the succeeding overseers a just account in writing, fairly entred in a book to be kept for that purpose, and signed by them, of all sums by them received, or rated and not received; and also of all materials that shall be in their hands, or in the hands of any of the poor to be wrought, and of all money paid by such churchwardens and overseers so accounting, and of all other things concerning their office; and shall also pay and deliver over all sums of money and other things, which shall be in their hands, to the succeeding overseers; which account shall be verified by oath before one justice, who shall sign and attest the taking of the same, at the foot of the account, without fee; and the said books shall be preserved by the churchwardens and overseers, in some publick or other place within the parish or township; and they shall permit any person assessed, or liable to be assessed, to inspect the same at all reasonable times, paying 6d. for such inspection; and shall upon demand give copies at the rate of 6d. for every three hundred words, and so in proportion. And if they shall refuse or neglect to make and yield up such account, verified as aforesaid, within such time, or shall refuse or neglect to pay over the money and other things in their hands; any two justices may commit them to the common gaol, till they shall have given such account, or shall have paid and yielded up such money and other things in their hands as aforesaid. s. 1, 2.

Churchwardens] M. 15 C. 2. K. and Pecke. The churchwarden was committed for refusing to account for all monies received and disbursed by him, and of all such things as concern his office. But upon an *habeas corpus* he

he was discharged; for if he be committed as overseer, it must be so expressed in the *mittimus*, although to be overseer be annexed to the office of churchwarden, for the justices have no power over him as churchwarden. *1 Keb. 574.*

Such money as shall be in their hands, shall pay and deliver over to their successors.] M. 8 G. 2. K. and the justices of Somersetshire. *Mandamus* to the justices, to grant a warrant for levying 30l. 17s. 11d. being the balance of the last overseers account in their hands. They return, that true it is there was such a balance, but that the vestry had ordered them to retain it, and employ an attorney to sue for some charity money, and get it laid out for the benefit of the poor; that one *Young* was so employed, and the balance exhausted in fees, and that the overseers had engaged to pay *Young*; and for that cause they had refused to grant the warrant. But by the court, There must go a peremptory *mandamus*; for the statute says, the balance shall be paid over to the new overseers, under a penalty; and it is not in the power of the vestry, to dispense with the statute. *Str. 992.*

Until he have made a true account] T. 2 W. The mayor and churchwardens of Northampton. The mayor committed the churchwardens, as overseers of the poor, for refusing to account, and the warrant of commitment concluded, until they be duly discharged according to law. The court held the commitment void; because the warrant ought to conclude, there to remain until they shall account, as the statute doth appoint. And the difference is, where a man is committed as a criminal, and where only for contumacy; for in the first case, the commitment must be, until discharged according to law; but in the latter, until he comply and perform the thing required; for in that case, he shall not lie till a sessions, but shall be discharged upon performance of his duty. *Carth. 152.*

Overseer removing or dying-

2. *And if any overseer shall remove, he shall before his removal, deliver over, to some churchwarden or other overseer, his accounts, verified as aforesaid, with all assessments, books, papers, money, and other things concerning his office; and if any overseer shall die, his executors or administrators shall within 40 days after his decease, deliver over all things concerning his office to some churchwarden or other overseer, and shall pay out of the assets all money remaining due, which he received by virtue of his office, before any of his other debts are paid.* *17 G. 2. c. 38. s. 3.*

3. By

3. By the 43 *El.* c. 2. *If any person shall find himself aggrieved by any act done by the said overseers or justices; he may appeal to the general quarter sessions, whose order therein shall bind all parties.* Appeal against the account.

And this power of appealing generally, doth not seem to be taken away by the statute here next following; but the same being only in the affirmative, it seemeth that they may both stand together, and that the appeal may be upon either of the statutes.

And upon this statute of the 43 *El.* the appeal is not limited to the next sessions, but may be at any time after.

The other statute abovementioned, with regard to this matter, is as follows: *If any person shall have any material objection to such account or any part thereof, he may, giving reasonable notice, appeal to the next sessions; but if reasonable notice be not given, then they shall adjourn the appeal to the next sessions after; and the court may award costs to either party, as in cases of settlements by the 8 & 9 W. 17 G. 2. c. 38. s. 4.*

So that here is a power to award costs, if the appeal is to the next sessions; but if the appeal is upon the 43 *El.* and not to the next sessions, there is no power in such case to award costs.

And by the said statute of the 17 G. 2. c. 38. *In all corporations or franchises, which have not four justices, persons aggrieved may appeal, if they think fit, to the next county sessions. s. 5.*

M. 4 An. 2. and Hedges. On appeal upon the statute of the 43 *El.* against the allowance of the account by two justices, the sessions ordered the overseer to pay so much over, which they adjudged to be in his hands; and for not doing this, they committed him. But by the court: They should have levied the arrears by distress and sale, and in default of distress have committed him; for the sessions must execute their judgment, in the same manner as the two justices must do. *2 Selk. 533.*

T. 7 G. K. and Bartlett. An order made at the sessions relating to accounts of overseers, was moved to be quashed, because it did not appear that the accounts had been before the justices out of sessions, and they cannot come *per saltum* to the sessions. On the other side it was said, that it appeared there was an allowance, for the appeal is said to be against the disbursements and the allowance thereof, which the court will presume was regular. But by the court, It doth not follow, that this was an allowance by two justices, for the parish might do it; and therefore

therefore for want of jurisdiction this order must be quashed. *Str.* 983.

Allowance of the account.

Westmorland. **P**ERUSED and allowed (having been first signed and verified on oath by A. B. and C. D. churchwardens, and E. F. and G. H. overseers of the poor) by me one of his majesty's justices of the peace in and for the said county, the — day of —. J. P.

VII. Penalty of overseers for the neglect of their duty.

1. In general, Overseers being negligent in their office, shall forfeit for every default 20s. to the poor, to be levied by one of the churchwardens or overseers, by warrant of two justices (1 Q.) by distress; or in defect thereof, any two such justices may commit the offender to the common gaol, there to remain without bail or mainprize, till the said forfeiture shall be paid. 43 El. c. 2. s. 2, 11.

2. And by the 17 G. 2. c. 38. Any parish officer neglecting to obey any directions of that act, being convicted thereof on oath before two justices, in two calendar months after the offence committed, shall forfeit not exceeding 5l. nor less than 40s. to the poor, by distress. s. 14.

3. And in all actions to be brought in the courts of Westminster, or at the assizes, for the recovery of any sum mispent or taken to their own use by the churchwardens or overseers, the evidence of the parishioners, other than such as receive alms, shall be admitted. 3 W. c. 11. s. 12.

VIII. Indemnity of overseers in the performance of their duty.

1. By the 7 J. c. 5. and 21 J. c. 12. If any action be brought against any overseer, or other person which in his aid, or by his commandment, shall do any thing concerning his office, he may plead the general issue, and if he recovers, he shall have double costs: And such action shall be laid in the proper county, and not elsewhere.

2. And by the 43 El. c. 2. Persons sued for any thing done on that act, may plead the general issue, and have treble damages with costs, and that to be assessed by the jury in case of

the issue tried, or by a writ to enquire of the damages, in case the plaintiff is nonsuit. s. 19.

Pope. See **P0pery.**

P0pery.

- I. General observations.
- II. Popish supremacy opposed and abolished.
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- V. Popish books and Relicks.
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- XI. Registering estates.
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- XIV. Papists not to come to court.
- XV. Not to come within ten miles of London.
- XVI. Papists confined to their habitations.
- XVII. Not to inherit, or take by devise.
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- XXI. Disabled as to offices, law, physick.
- XXII. Not to be executor, or administrator.
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- XXIV. Shall be deemed excommunicate.
- XXV. Popish baptism.
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XXVII. *Popish burial.*

XXVIII. *Armour.*

XXIX. *Horses.*

XXX. *Popish wife.*

XXXI. *Heir of a popish recusant.*

XXXII. *Protestant children of papists.*

XXXIII. *Oaths.*

XXXIV. *Minister to present papists.*

XXXV. *Recusants conforming.*

XXXVI. *Ecclesiastical jurisdiction.*

I. General observations.

1. **I**T is to be observed in general, that *popish* recusants are liable to all the forfeitures and disabilities, and other inconveniences, to which other recusants are liable; and to many others, to which other recusants are not liable.

For to be a *recusant*, doth not necessarily imply the being a *papist*: But a *recusant* is any person who refuses to go to church, and worship God, after the manner of the church of England: A *popish recusant*, is a papist who so refuseth: And a *popish recusant convicted*, is a papist legally convicted thereof. For the want of attending to which distinction, divers authors who have treated of this subject, have fallen into confusion.

2. There are several statutes made against recusants in *Q. Elizabeth's* reign, and the former part of the reign of *K. James* the first, which are not restrained to popish recusants only; but as there were few or no other recusants but papists at that time, they have regard chiefly to persons of that profession: and therefore they are inserted under this title: although the words of them do extend, and the act of toleration supposes them to extend, to all nonconformists in general. But the force of them as to protestant dissenters is taken away by that act. But no papist, or popish recusant, shall have any benefit by the act of toleration.

3. The reader will observe from the dates of the several acts, how the penalties have from time to time been enforced and enlarged, upon every fresh attempt against the government; especially at the several periods during

Q. Elizabeth's reign, after the powder plot in the reign of *K. James* the first, and after the rebellion in 1715. One of the acts particularly, immediately after the powder plot, which will often occur in the following sections, is, in the statutes at large, a well penned act. It is much in the style of lord *Coke*; strong, and clear: where tho' many words are used, yet none of them can be wanted. And probably it was drawn up by him. It brings the several laws together, which had been enacted on the subject it treats of; and renders them all useless and dead, as much as if it had repealed them in express words. And it may be a pattern in reducing into one general law, the several statutes which on many heads are now become very numerous, and not a little confused.

4. In perusing this whole title, wherein the laws against papists are brought clearly together in one view, it will occur possibly to remark, that they are many, and perhaps severe. But it ought to be considered withal, how protestants are treated in popish countries; and that the offences intended to be guarded against by these laws, are not the stealing of an ox, or the burning of an house, or any other invasion of private property, but dethroning the prince, and overturning the government.

'Tis true, these laws in the present age have been permitted to sleep in a great measure, and that even at a time when a rebellion was advancing, and a foreign invasion attempted in favour of a popish prince and government; but they are suffered nevertheless to continue in force; perhaps that it may appear to the enemies of our constitution, that if they are spared, it is not for want of power, but of inclination to punish.

II. *Popish supremacy opposed and abolished.*

1. Whoever shall affirm, that the king hath not the supreme authority in causes ecclesiastical, shall be excommunicated *ipso facto*, and not restored but by the archbishop on his repentance. *Can. 2.*

2. By the statute of the 27 *Ed. 3. ft. 1. c. 1.* which is called the statute of provisors; persons suing in a foreign realm, or impeaching judgment given in the king's court, shall incur a *præmunire*; that is, shall have a day given to appear in person to answer to the contempt, and if they come not, they shall be out of the king's protection, their lands and goods shall be forfeited, and their bodies imprisoned, and ransomed at the king's will.

And if any bring into the realm a summons or excommunication against any one executing the statute of provisors, he shall suffer pain of life and member. 13 R. 2. *ſt.* 2. *c.* 3.

3. And by the 5 *El. c.* 1. If any person shall maintain the authority of the see of *Rome* in this realm, he shall incur a *præmunire* for the first offence, and for the second shall be guilty of high treason. Prosecution to be within a year. And the justices in sessions may enquire thereof, and shall certify the same into the king's bench. *f.* 2, 3, 4, 10, 11.

4. And if any person shall put in practice to absolve or withdraw any subjects from their allegiance, or if any person shall be willingly so absolved or withdrawn; he, his aiders and maintainers shall be guilty of high treason. The trial to be at the assizes, or in the king's bench. 3 *J. c.* 4. *f.* 22, 23, 25.

III. Concerning the pope's presentation to benefices.

1. No person by authority from the court of *Rome*, shall disturb any person of the holy church, presented or collated by the king or his subjects; on pain of fine and imprisonment. 25 *Ed.* 3. *ſt.* 6.

2. None shall take any benefice of an alien, or convey money to him for the farm thereof; on pain of incurring a *præmunire*. 3 R. 2. *c.* 3.

3. No alien shall purchase or occupy a benefice in *England*; on pain of a *præmunire*. 7 R. 2. *c.* 12.

4. He that shall go out of the realm, to procure a benefice, shall be out of the king's protection; and the same shall be void. 12 R. 2. *ſt.* 2. *c.* 15.

5. If any person shall accept a benefice from the pope, he shall be banished for ever, and his lands and goods forfeited. 13 R. 2. *ſt.* 2. *c.* 2.

6. No provision of a benefice not vacant, made by the pope, and licensed by the king, shall be available; but persons endeavouring to exclude the incumbent thereby, shall incur a *præmunire*. 7 H. 4. *c.* 8. 3 H. 5. *ſt.* 2. *c.* 4.

IV. Bringing bulls and other instruments from Rome.

1. By the statute of the 16 R. 2. *c.* 5. (which is the famous statute called the statute of *præmunire*) If any person shall purchase, or bring into the realm, any bulls or instruments

ments from *Rome*, or elsewhere, they shall incur a præmunire: that is to say, they shall be put out of the king's protection; and their lands and goods shall be forfeit to the king; and they shall be attached by their bodies, if they may be found, and brought before the king and his council, there to answer; or else process shall be awarded against them by *præmunire facias* (so called from those words in the writ).

2. But by a subsequent statute, if any person shall get or publish any bull or instrument from *Rome*, he shall be guilty of high treason. And his aiders and comforters shall incur a præmunire. And concealing the same shall be misprision of high treason. 13 *El. c. 2. f. 3, 4. 5.* And the justices of the peace may inquire thereof, within a year and day. 23 *El. c. 1. f. 8.*

V. Popish books and relicks.

1. If any person shall have in his custody any books called antiphoners, missals, grailes, processionals, manuals, legends, pies, portuassles, primers in *latin* and *english* (except those set out by K. H. 8.) couchers, journals, ordinals or other books for the service of the church, not set forth by the king; he shall forfeit for the first offence 20s. for the second 4l. and for the third shall be imprisoned at the king's will. And the justices of the peace in their general sessions may hear and determine the same. 3 & 4 *Ed. 6. c. 10.*

2. No person shall bring from beyond the seas, nor shall print, sell, or buy any popish primers, ladies psalters, manuals, rosaries, popish catechisms, missals, breviaries, portals, legends and lives of saints, containing superstitious matter, printed or written in any language whatsoever; nor any other superstitious book printed or written in *english*; on pain of 40s. one third to the king, one third to him who shall sue in any court of record, and one third to the poor of the parish where such books shall be found; and the books to be burned. 3 *J. c. 5. f. 25.*

3. If any person shall bring into the realm any agnus dei, crosses, pictures, beads, or such like vain and superstitious things, from the bishop of *Rome*, or any authorised by him to consecrate the same, and offer them to any person to be worn or used; both the bringer and receiver shall incur a præmunire: But if the receiver

shall in one day's time deliver the same to a justice of the peace, or if such person to whom the same is offered shall carry the bringer before the next justice, or (if he cannot) shall disclose the offender's name and place of abode or resort, to the bishop, or to a justice of the peace, he shall not incur such præmunire. And in such case, the justice in 14 days shall signify the same to one of the privy council, on pain of incurring a præmunire. 13 *El. c. 2. f. 7, 8, 10.*

4. And two justices of the peace (and mayors and other chief officers in corporations) may search the houses and lodgings of every popish recusant convict, or of every person whose wife is a popish recusant convict, for popish books and relicks of popery: and if any altar, pix, beads, pictures, or such like popish relicks, or any popish book, shall be found in their custody, as in the opinion of the said justices, mayor, or other chief officer, shall be thought unmeet for such recusant to have or use, the same shall be presently defaced and burnt, if it be meet to be burned; and if it be a crucifix, or other relick of any price, the same to be defaced at the sessions, and returned to the owner. 3 *J. c. 5. f. 26.*

VI. Foreign education of popists.

1. If any person shall contribute or send over sea, any money or other relief to any seminary abroad; he shall incur a præmunire. 27 *El. c. 2. f. 6.*

2. They who be in seminaries abroad shall return in six months after proclamation, and conform in two days, before the bishop, or two justices of the peace; otherwise if they return at all, without submission, they shall be guilty of high treason. 27 *El. c. 2. f. 5.*

3. If any person shall go, or send any person, beyond the seas, to be popishly educated, who shall be there so instructed, or shall send any money or other thing for that purpose; he shall, on conviction before the judges of the king's bench, or of assize, be disabled to be plaintiff in any action, or to be committee of any ward, or executor, or administrator, or capable of any legacy or deed of gift, or to bear any office; and shall forfeit his goods, and shall forfeit his lands during life. But if he shall conform in 6 months after his return, he shall be discharged. 3 *C. c. 2. 1 J. c. 4. f. 6, 7.*

4. Children.

4. Children, not being soldiers, mariners, merchants, or their apprentices or factors, departing the realm, on account of education, or otherwise without licence from the king, or six of the privy council, shall take no benefit by any gift, conveyance, descent, devise, or otherwise, of any lands or goods, until they conform. 3 J. c. 5. f. 16. And persons sending any such child over seas, without licence, shall forfeit 100l. to him who shall sue in any court of record. 3 J. c. 5. f. 16. 11 & 12 W. c. 4. f. 6.

5. No woman, or child under 21, except sailors or factors, shall pass over sea without licence of the king and council; on pain that the officer of the port shall forfeit his office and his goods, the owner of the ship his vessel, and the master his goods and be imprisoned 12 months. 1 J. c. 4. f. 8.

6. No person, not bred up by his parents in the popish religion, shall breed up or suffer his children to be bred up in the popish religion; on pain of being disabled to bear any office, until they conform. 25 C. 2. c. 2. f. 8.

VII. Penalty of perverting others, or being perverted to popery.

If any person shall put in practice to reconcile any subjects to popery, or if any person shall be willingly so reconciled; he, is aiders, and maintainers, shall be guilty of high treason. The trial to be at the assizes, or in the king's bench. 3 J. c. 4. f. 22, 23, 25.

VIII. Jesuits and popish priests.

1. No jesuit or popish priest shall come into or be in the realm, on pain of high treason; unless he conform. 27 El. c. 2. f. 2, 3, 10.

2. And if any person shall knowingly receive or relieve any such, he shall be guilty of felony without benefit of clergy. 27 El. c. 2. f. 4.

3. And if any person, knowing such jesuit or priest to be in the realm, shall not in 12 days discover the same to a justice of the peace or other higher officer, he shall be fined and imprisoned at the king's pleasure. And if such justice or other officer shall not in 28 days give information thereof to one of the privy council, he shall forfeit 200 marks. 27 El. c. 2. f. 11.

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4. And a suspected jesuit or popish priest, being lawfully examined, and refusing to answer whether he be a jesuit or popish priest, shall be imprisoned till he make direct and true answer. 35 *El. c. 2. f. 11.*

5. And the person who shall first discover, to any justice of the peace, any person who shall entertain or relieve any jesuit, seminary, or popish priest, within three days after the offence; so that by reason of such discovery any offender shall be taken and convicted: such person shall not only be freed from any penalty for such offence, if himself be an offender therein, but shall also have the third part of the forfeitures if they do not exceed 150*l.* and if they do exceed 150*l.* then he shall have 50*l.* 37. *c. 5. f. 1.*

6. If any person shall apprehend any popish bishop, priest, or jesuit, and prosecute him till he be convicted of exercising any part of the office or function of a popish bishop or priest, he shall receive from the sheriff 100*l.* reward. 11 & 12 *W. c. 4. f. 1, 2.*

7. If any popish bishop, priest, or jesuit, shall exercise any part of the office or function of a popish bishop or priest, (except in foreign ministers houses), he shall be adjudged to perpetual imprisonment. 11 & 12 *W. c. 4. f. 3, 5.*

8. If any person shall contribute, or send over sea; any money or other relief to any jesuit or popish priest; he shall incur a præmunire. 27 *El. c. 2. f. 6.*

IX. Saying and bearing mass.

1. If any person shall say or sing mass, he shall forfeit 200 marks, and be imprisoned for a year, and till paid;

And if any person shall wilfully bear mass, he shall forfeit 100 marks, and be imprisoned for a year;

The forfeitures to be one third to the king, one third to the poor, and one third to him who shall sue in any court of record. And if not paid in 3 months after judgment, he shall be committed till he pays, or conforms. And the sessions may determine the same. 23 *El. c. 1. f. 4, 9, 10, 11.*

2. If any popish bishop, priest, or jesuit shall say mass, except in foreign ministers houses, he shall be adjudged to perpetual imprisonment. 11 & 12 *W. c. 4. f. 3, 5.*

3. And

3. And the person who shall first discover to any justice of the peace any mass to have been said, and the persons that were present thereat, and the priest that said the same, or any of them, within three days after the offence, and by reason of such discovery any offender is taken and convicted; such person shall not only be freed from any penalty for such offence, if himself be an offender therein, but shall also have the third part of the forfeitures, if they do not exceed 150*l.* and if they do exceed 150*l.* then he shall have 50*l.* and after conviction of the offender, he shall have a certificate from the judges, or justices of the peace before whom the conviction shall be, directed to the sheriff or person who shall seize the goods, or levy the forfeiture, commanding him to pay the same. 3 *J. c. 5. f. 1.*

4. And conveyances made by recusants to evade the penalties for saying or hearing mass, shall be void. 29 *El. c. 6. f. 1.*

X. Penalties of 12*d.* a Sunday, and 20*l.* a month, for not going to church.

1. All persons, having no lawful or reasonable excuse to be absent, shall resort to their parish church or chapel, or upon reasonable let thereof, to some usual place where divine service shall be performed, according to the liturgy and practice of the church of *England*, upon every Sunday and holiday; on pain of punishment by the censures of the church, or of forfeiting to the poor for every offence 1*s.* to be levied by the churchwardens by way of distress. 1 *El. c. 2. f. 14, 24.* Except dissenters qualified by the act of toleration, who resort to some congregation of religious worship allowed by that act. 1 *W. c. 18. f. 2, 16.*

And he who is absent from his own parish church, shall be put to prove where he went to church. 1 *Haw. 13.*

And one justice, on proof (in one month after default,) by confession, or oath of witness, may call the party before him; and if he shall not make sufficient excuse, and due proof thereof to the satisfaction of the justice, such justice shall give warrant to the churchwarden to levy 12*d.* to the use of the poor of the parish for every default by distress and sale, rendering the overplus. For want of distress commitment till paid. 3 *J. c. 4. f. 27, 28.*

2. Every person above the age of 16 years, who shall not repair to some church, chapel, or usual place of common prayer, being convicted thereof before the judges of assize, or justices of the peace in their open quarter sessions, shall forfeit 20l. a month, one third to the king, one third to the maintenance of the poor of the parish, and of the houses of correction and of impotent and maimed soldiers, as the lord treasurer, chancellor, and chief baron of the exchequer shall order, and one third to him who shall sue in any court of record. If, not paid in 3 months after judgment, he shall be imprisoned till he pay, or conform himself to go to church. 23 *El.* c. 1. s. 5, 11. 29 *El.* c. 6. s. 7.

Note; These two last statutes, by inflicting 20l. for a month's absence, dispense not with the forfeiture of 12d. on the former statutes for the absence of one *sunday*; for both may well stand together; and the 12d. is immediately forfeited upon the absence of each particular day. 1 *Haw.* 13.

3. And every offender in not repairing to church, being once convicted, shall pay into the exchequer at *Easter* or *Michaelmas* term which shall first happen after the conviction, 20l. for every month contained in the indictment; and shall also afterwards, without any other indictment or conviction, pay into the exchequer at every *Easter* and *Michaelmas* term 20l. for every month till he conform; except where the king may refuse the same, and take two parts of the lands as hereafter is mentioned. 3 *J. c. 4.* s. 8.

4. And every conviction recorded, shall by the court be certified into the exchequer, and if default shall be made in any part of payment, the king may by process take the goods, and two parts of the lands of the offenders. 3 *J. c. 4.* s. 9.

5. Also the king may refuse the penalty of 20l. a month for not coming to church, and in lieu thereof may seize two parts of the offender's lands, and keep them till he conform. 3 *J. c. 4.* s. 10, 11.

6. And where seizure shall be made of two parts of the lands, for the penalty of 20l. a month, such two parts shall, according to the extent thereof, go towards payment, but the third part shall not be extended or seized. And when the recusant shall die, and the said penalty not paid, the king shall keep the two parts, until the whole be thereby, or otherwise, paid. 1 *J. c. 4.* s. 5.

7. And every person who shall retain in his service, or shall relieve, keep, or harbour in his house any servant, sojourner, or stranger, who shall not repair to church, but shall forbear for a month together, not having reasonable excuse, shall forfeit 10l. for every month he shall continue in his house such person so forbearing. And the sessions may hear and determine the same. 3 *J.*

c. 4. *f.* 32, 33, 36.

8. And conveyances made by recusants to evade the penalties for not coming to church, shall be void. 29 *El.* *c.* 6. *f.* 1.

9. And the justices in sessions shall have power to enquire, hear, and determine of all recusants and offences for not repairing to church; and shall have power at the sessions where an indictment is taken for such offence, to make proclamation, by which it shall be commanded that the body of the offender shall be rendered to the sheriff, bailiff, or gaoler, before the next sessions: And if he shall not appear of record at the next sessions, then upon such default recorded, he shall stand convicted. 3 *J.* *c.* 4. *f.* 7.

10. And no indictment or other proceeding against recusants shall be reversed (unless they conform) for any want of form, nor by any thing but by direct traverse to the point of not coming to church. 3 *J.* *c.* 4. *f.* 16.

11. But every person who shall usually on *sundays* have in his house divine service as established by law, and be thereat himself usually present, and shall four times a year at least go to the parish church or other common church or chapel, he shall not incur any penalty for not repairing to church. 23 *El.* *c.* 1. *f.* 12. And this also shall not extend to protestant dissenters, who resort to some place of religious worship allowed by the act of toleration. 1 *W.* *c.* 18.

12. And the churchwardens and constables shall (on pain of 20l.) present at the quarter sessions once a year, the monthly absence from church of all recusants, and the names and ages of their children above nine years of age, and the names of their servants. And the presentments shall be entered by the clerk of the peace without fee, on pain of 40s. And if the party presented shall be indicted and convicted, such churchwarden or constable shall have a reward of 40s. to be lieved of the recusant's goods by warrant of the justices in sessions. 3 *J.* *c.* 4. *f.* 4, 5, 6.

XI. Registering estates.

1. Every person being a popish recusant, or papist, or educated in the popish religion, or whose parent or parents shall be a papist or papists, or who shall use or profess the popish religion, shall within six months after he shall be of the age of 21, take the oaths of the 1 G. c. 13. and make the declaration against popery of the 30 C. 2. in one of the courts at *Westminster*, or the quarter sessions; or in default thereof, shall within six months afterwards, and within six months after he shall come into the possession of any lands, register the same; where they lie; who is the possessor of them; what estate he hath in them; the yearly rent, if lett; if lett upon lease, who made it, what rent, what fine; the time when registered; in a parchment book or roll to be kept by the clerk of the peace. 1 G. *st.* 2. c. 55. *f.* 1.

2. And such lands shall be registered in the county, where the house thereupon stands. 3 G. c. 18. *f.* 3.

3. And his name shall be subscribed to the registry, in the presence of two justices in open sessions, by himself or his lawful attorney (the warrant of attorney to be proved by two witnesses, and entered of record); and two justices shall subscribe their names as witnesses (on pain of 20*l.*) that the entry was duly made. And the clerk of the peace shall, on application made ten days at least before the sessions, enter the same before such sessions; who shall have 3*d.* for every 200 words of the registry and entry of record, and for every copy thereof, and for any one comparing the same with the originals; and 4*d.* for every search. And if he neglect or refuse to do his duty herein, he shall forfeit his office. 1 G. *st.* 2. c. 55. *f.* 1.

4. Persons not qualifying, or not registering, or not registering truly, shall forfeit such lands, or the value thereof, two thirds to the king, and one third to him who shall sue for the same at the common law, or in chancery. 1 G. *st.* 2. c. 55. *f.* 1.

5. But no action for any forfeiture for not registering, or for registering fraudulently, shall be brought after two years after the offence committed. 3 G. c. 18. *f.* 2.

XII. Inrolling

XII. Inrolling deeds and wills.

1. No manors, lands, tenements, or hereditaments, or any interest therein, or rent, or profit thereout, shall pass, alter, or change from any papist, or person professing the popish religion, by any deed or will, except such deed within six months after date, and such will within six months after the death of the testator, be inrolled in one of the courts of record at *Westminster*, or within the county where they lie, by the *custos rotulorum*, and two justices of the peace, and the clerk of the peace, or two of them at least, whereof the clerk of the peace to be one. 3 G. c. 18. f. 6.

2. But leases made by papists to protestants, whereon the full yearly value, or the ancient or most accustomed yearly rent or more shall be reserved, need not to be inrolled. 10 G. c. 4. f. 19.

3. And by the 4 G. 3. c. 38. such deeds and wills shall be good, if they be inrolled before *Jan. 1. 1765.* if advantage hath not been taken of the default before *Jan. 1. 1764.* And there is generally the like clause of indemnity in some act of parliament every two or three years.

4. Also no purchase made for full and valuable consideration, by and for the sole benefit of any protestant, shall be avoided for or by reason that any deed or will, through which the title is derived, hath not been inrolled; so as no advantage was taken thereof before the purchase, and so as no decree or judgment hath been obtained for want of such inrollment. 4 G. 3. c. 38.

XIII. Double taxes.

By the land tax acts, papists and reputed papists, being of 18 years of age, who shall not have taken the oaths of allegiance and supremacy, shall pay double land tax.

XIV. Papists not to come to court.

1. No popish recusant convict shall come into the court or house where the king or his heir apparent shall be (unless commanded by the king or council); on pain of 100l. half to the king, and half to him who shall discover and sue for the same in any court of record. 3 J. c. 5. f. 2.

2. And

proper.

2. And if any member of either house of parliament, not having taken the oaths of allegiance and supremacy, and made and subscribed the declaration against popery, shall come into the king's presence, or the court or house where he is (without licence from six of the privy council), he shall suffer as a popish recusant convict, and shall be disabled to hold any office, or to vote in either house of parliament, or to be plaintiff, guardian, executor, administrator, or to take any legacy or gift, and shall forfeit 500 l. to him who shall sue. 30 C. 2. ft. 2. c. 1.

XV. Not to come within ten miles of London.

1. All popish recusants, who shall come, dwell, or remain, within the city of *London*, or within ten miles thereof, who shall be indicted or convicted of such recusancy, or who shall forbear going to church to hear divine service for three months, shall within ten days after such indictment or conviction, depart from the said city, and ten miles compass of the same; and shall also within the said time deliver up their names to the lord mayor, if they dwell within the city or liberties thereof; and if they dwell in any other county, within ten miles of the city, they shall deliver up their names to the next justice; on pain of 100*l.* half to the king, and half to him who shall sue. 3 *J. c.* 5.
f. 4.

2. And for the better discovering of papists within ten miles of *London*, every justice in the neighbouring counties, shall cause to be arrested and brought before him every such person within the said limits, not being a merchant foreigner, as are or are reputed to be papists (except ambassadors servants), and tender to him the declaration against popery of the 30 C. 2. which if he shall refuse to make and subscribe, and afterwards continue within ten miles of *London*, he shall suffer as a popish recusant convict. The justice to certify such subscription, or refusal, into the king's bench or to the next quarter sessions. 1 W.

XVI. Papists

XVI. Papists confined to their habitations.

1. Every person above 16 years of age, being a popish recusant, and having any certain place of abode, who being convicted for not repairing to some church, chapel, or usual place of common prayer to hear divine service there, but forbearing the same contrary to law, shall within 40 days next after the conviction (if he be within the realm, and not hindered by imprisonment, by command of the king or council, or by sickness, and in such case in 20 days after the removal of such impediment) repair to his usual dwelling, and shall not remove above five miles from thence, unless he be licensed as is herein after directed, on pain of forfeiting his goods, and also to the king his lands during life, unless they be customary or copyhold, and then to the lord of the manor. 35 *El. c. 2. f. 3. 5.*

And it seemeth that these shall be computed according to the *English* manner, allowing 1760 yards to a mile, and that the same shall be reckoned not by streight lines, as a bird or arrow may fly; but according to the nearest and most usual way. 1 *Haw. 25.*

2. Having repaired to their dwelling, they shall within 20 days notify their coming, and present themselves, and deliver their true names in writing to the minister of the parish, and to the constable, and the minister shall enter the same in a book. 35 *El. c. 2. f. 6.*

3. And, after, the minister and constable shall certify the same in writing to the next sessions; and the clerk of the peace shall enter the same in the rolls of the sessions. 35 *El. c. 2. f. 7.*

4. And if such recusant (not being a feme covert) have not lands of 20 marks a year, or goods worth above 40*l.* and shall not conform in 3 months, being thereto required by the bishop, or a justice of the peace, or the minister; he shall abjure the realm before two justices of the peace, or the coroner: who shall enter the same of record, and certify the same at the next assizes. And if he shall refuse to abjure or not depart, or return; he shall be guilty of felony without benefit of clergy. 35 *El. c. 2. f. 8, 9, 10.*

Abjure] The form whereof, according to the ancient books, is this: *This hear you, sir coroner, that I. A. O. of ——— in the county of ——— am a popish recusant, and*
in

in contempt of the laws and statutes of England, I have and do refuse to come to their church: I do therefore, according to the intent and meaning of the statute made in the 35th year of queen Elizabeth, late queen of this realm of England, abjure the realm of England. And I shall haste me towards the port of P. which you have given and assigned to me, and that I shall not go out of the highway, leading thither, nor return back again; and if I do, I will that I be taken as a felon of the king. And that at P. I will diligently seek for passage, and I will tarry there but one flood and ebb, if I can have passage: and unless I can have it in such space, I will go every day into the sea up to my knees, assaying to pass over. So help me God and his doom. Stam. 116. Mir. b. 1. Offic. Cor. 49.

5. But if such person restrained shall be urged by process, or be bound to appear in any of the king's courts, or be sent for by the council, or be bound to render his body to the sheriff on proclamation, he shall incur no penalty for removing for such purpose. 35 El. c. 2. s. 13, 14.

6. Also, popish recusants confined to their habitations by the 35 El. may be licensed to remove.

(1) By the king.

(2) By three or more of the privy council, in writing under their hands; who may give licence to such recusant to travel out of the compass of five miles, for such time as shall be contained in his licence, for their travelling, attending, and returning, and without any other cause to be expressed in the licence.

(3) If such recusant shall have necessary occasion or business; then, upon licence in writing under the hands and seals of four of the next justices of the county or place, with the assent in writing of the bishop; or of the lieutenant, or a deputy lieutenant of the county residing therein, under their hands and seals; in which licence shall be specified both the cause of the licence, and the time how long the party licensed shall be absent in travelling, attending, and returning: In such case, the person so licensed may travel about such his necessary business, and for such time as shall be comprised in the licence; he first taking oath before the said four justices, or any of them, that he hath truly informed them of the cause of his journey, and that he shall not make any causeless stay. And such person departing above five miles, not having such licence, and not having taken such oath, shall incur the penalty of the 35 El. above-mentioned. 3 J. c. 5. s. 7.

XVII. Not to inherit, or take by devise.

If any person educated in the popish religion, or professing the same, shall not within six months after he shall be 18 years of age, take the oaths of allegiance and supremacy, and subscribe the declaration of the 30 C. 2. in the chancery, king's bench, or quarter sessions, he shall (in respect of himself, but not of his heirs) be incapable to inherit or take any lands, by descent, devise, or limitation; but the next of kin, being a protestant, shall have the same. 11 & 12 W. c. 4. f. 4.

XVIII. Shall not purchase.

1. Every papist, or person making profession of the popish religion, shall be disabled to purchase any lands, or profits out of the same, in his own name, or in the name of any other to his use, or in trust for him; but the same shall be void. 11 & 12 W. c. 4. f. 4.

2. But no sale of any lands for a valuable consideration by any person, being the reputed owner, or in possession of the rents and profits thereof, to be made to and for a protestant purchaser, shall be avoided on any pretence of disability in the act of the 11 & 12 W. c. 4. and of the 1 J. c. 4. incurred by any person making such sale, or by or through whom the title shall be derived; unless before such sale, the person intitled to take advantage of such disability, shall have recovered the lands, or given notice of his claim to the purchaser, or entered his claim at the quarter sessions. 3 G. c. 18. f. 4. But the above statute of the 11 & 12 W. shall continue, that papists shall not purchase. f. 5.

XIX. Shall not present to benefices.

1. A popish recusant convict shall be disabled to present, or grant any avoidance, to any ecclesiastical living, or nominate to any free school, hospital, or donative. 3 J. c. 5. f. 18.

2. And whereas by the 1 W. c. 15. any two justices who shall know or suspect, or shall be informed, that any person is, or is suspected to be a papist, shall tender to him the declaration of the 30 C. 2. and if he shall not appear before the said justices, on notice to him given by warrant of the said justices, or left at his usual place of

abode, or if he shall refuse to make and subscribe the declaration, they shall certify his name and place of abode at the next sessions to be there recorded by the clerk of the peace; It is enacted by the 1 W. c. 26. f. 2. that every person so recorded, shall from the time of such record, be disabled to present or nominate to any benefice, free school, hospital, or donative, as fully as if he were a popish recusant convict.

3. And where any person shall be possessed of any right of presentation or nomination as aforesaid, *in trust* for any papist or popish recusant, who shall be convicted or disabled by the 3 J. c. 5. or by the 1 W. c. 26. such trustee shall be disabled to present or nominate, or to grant any avoidance thereof. 1 W. c. 26. f. 3.

4. Also, it is further enacted, that every papist, or person making profession of the popish religion (that is, whether convicted by either of the former acts or not) and every child not being a protestant, under the age of 21, of every such papist or person professing the popish religion, and every mortgagee, trustee, or person any ways intrusted, directly or indirectly, by or for any such papist or person professing the popish religion, or such child as aforesaid, whether such trust be declared by writing or not, shall be disabled to present or nominate. 12 An. st. 2. c. 14. f. 1.

5. And the chancellor and scholars of the university of Oxford shall present and nominate to the same, in the counties of Oxford, Kent, Middlesex, Suffex, Surrey, Hampshire, Bershire, Buckinghamshire, Gloucestershire, Worcester-shire, Staffordshire, Warwickshire, Wiltshire, Somersetshire, Devonshire, Cornwall, Dorsetshire, Herefordshire, Northamp-tonshire, Pembrokehire, Caermarthenshire, Brecknockshire, Monmouthshire, Cardiganshire, Montgomeryshire, the city of London, and other cities and towns within the said coun-ties:

And the chancellor and scholars of the university of Cambridge shall present and nominate in the counties of Essex, Hertfordshire, Bedfordshire, Cambridgeshire, Hunting-donshire, Suffolk, Norfolk, Lincolnshire, Rutlandshire, Lei-cestershire, Derbyshire, Nottinghamshire, Shropshire, Cheshire, Lancashire, Yorkshire, Durham, Northumberland, Cumber-land, Westmorland, Radnorshire, Denbighshire, Flintshire, Carnarvonshire, Angleseyshire, Merionethshire, Glamorganshire, and the cities and towns within the said counties. 3 J. c. 5. f. 19, 20.

6. And

6. And if any trustee, mortgagee, or grantee, of an avoidance, shall present or nominate to any such living, free school, or hospital, whereof the trust shall be for any recusant convict, or disabled, without giving notice in writing to the university, in three months after the avoidance shall happen; he shall forfeit 500l. to the university. 1 W. c. 26. f. 4.

7. But the chancellor and scholars shall not present to any such ecclesiastical living, any person who shall then have any other benefice with cure of souls; nor shall the person presented be absent from the same above 60 days in any one year. 1 W. c. 26. f. 5, 6.

8. And every grant of an ecclesiastical living, school, hospital, or donative, by any papist or trustee for him, shall be void, unless made *bona fide* for a full and valuable consideration to a protestant purchaser. And also every devise thereof, with intent to secure the benefit thereof to the heirs or family of such papist, shall be void. 11 G. 2. c. 17. f. 5.

XX. *Shall not teach school.*

If any papist shall keep school, or take upon him the education, or government, or boarding of youth; he shall be adjudged to perpetual imprisonment. 11 & 12 W. c. 4. f. 3, 5.

XXI. *Disabled as to offices, law, physick.*

1. No recusant convict shall practise the common law, as a counsellor, clerk, attorney, or solicitor; nor shall practise the civil law, as advocate or proctor; nor practise physick, nor be an apothecary; nor shall be a judge, minister, clerk, or steward of or in any court, or keep any court, nor shall be register or town clerk, or other minister or officer in any court; nor shall bear any office or charge, as captain, lieutenant, corporal, serjeant, ancient bearer, or other office in camp, troop, band, or company of soldiers; nor shall be captain, master, governor, or bear any office of charge of or in any ship, castle, or fortrefs; but be utterly disabled for the same: and every person offending herein, shall forfeit 100l. half to the king, and half to him who shall sue. 3 J. c. 5. f. 8.

2. And no popish recusant convict, nor any having a wife being a recusant convict, shall exercise any publick

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office, unless such husband, and his children above 9 years old, and his servants, go to church and conform. 3 *J. c. 5. f. 9.*

XXII. Not to be executor, or administrator.

A popish recusant convict shall be disabled to be executor or administrator. 3 *J. c. 5. f. 22.*

XXIII. Not to be guardian.

A popish recusant convict shall not have the custody of any child as guardian: but the wardship shall go to the next of kin, not being a recusant, to whom the estate cannot lawfully descend. 3 *J. c. 5. f. 22, 23.*

XXIV. Shall be deemed excommunicate.

1. Every popish recusant convict shall stand and be reputed to all intents and purposes disabled, as a person excommunicated, and as if he had been so denounced by the laws of the realm. 3 *J. c. 5. f. 11.*

2. And on process to the sheriff, for apprehending a popish recusant excommunicated, he may break open a house, or raise the power of the county. 3 *J. c. 4. f. 35.*

XXV. Popish baptism.

Every popish recusant shall within one month next after the birth of any child, cause it to be baptized by a lawful minister in open church; or if it is infirm, to be baptized by a lawful minister; on pain of 100*l.* one third to the king, one third to him who shall sue, and one third to the poor. 3 *J. c. 5. f. 14.*

XXVI. Popish marriage.

1. Every man, being a popish recusant convict, who shall be married otherwise than in some open church or chapel, and otherwise than according to the orders of the church of *England*, by a minister lawfully authorized, shall be utterly disabled and excluded to have any estate of freehold into the lands of his wife, as tenant by the curtesy of *England*: And if she have no lands, he shall forfeit 100*l.* half to the king, and half to him who shall sue. 3 *J. c. 5. f. 13.*

2. And

2. And every woman, being a popish recusant convict, who shall be married in other form than as aforesaid, shall be utterly excluded and disabled, not only to claim any dower or jointure, but also her widow's estate and frankbank in her husband's customary lands, and be disabled to have any part of his goods. 3 *J. c. 5. f. 13.*

3. But by the 26 *G. 2. c. 33.* After *March 25, 1754*, if they shall be married any where in *England*, other than in a church or publick chapel (unless by special licence from the archbishop of *Canterbury*), or without publication of banns, or licence, the marriage shall be null and void.

XXVII. Popish burial.

If any popish recusant, not being excommunicate, shall be buried in any place, other than the church or churchyard, or not according to the ecclesiastical laws; the executors or administrators of every such person so buried, shall forfeit 20*l.* one third to the king, one third to the informer or him who shall sue, and one third to the poor. 3 *J. c. 5. f. 15.*

XXVIII. Armour.

1. Any two justices, who shall know or suspect, or shall be informed, that any person is or is suspected to be a papist, may and shall tender to him the declaration in the act of the 30 *C. 2.* and if he shall not appear, after notice by warrant under hand and seal given to him, or left at his usual place of abode; or shall not make and subscribe the declaration; he shall be disabled to have or keep in his house or elsewhere, or in the possession of any other to his use, any arms, gunpowder or ammunition, except such weapons as shall be allowed by the sessions for the defence of his house or person. And any two justices may by warrant authorize in the day time any person, with the constable's assistance, to search such person's house for the same, and seize them for the use of the king. And the said justices shall deliver the same in open court at the next sessions for the use aforesaid; where also, they shall certify the name and place of abode of every person so subscribing, or not subscribing. 1 *W. c. 15. f. 2, 3, 4.*

2. And notwithstanding the taking away such armour, gunpowder, and munition, the said popish recusant shall be charged with the providing and maintaining of horse,

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and other armour, and munition, as other subjects, according to their several abilities. 3 *J. c. 5. f. 29.*

3. And every such person, not discovering and delivering them up to some justice in ten days after default in not appearing, or not subscribing as aforesaid, or hindering the seizure, shall be committed to gaol by any two justices for three months, and shall forfeit the arms, and pay treble value of them to the king, to be appraised by the justices at the next sessions. 1 *W. c. 15. f. 5.*

4. And every other person who shall conceal, or knowing thereof, not discover to a justice such arms or ammunition, or shall hinder the seizing thereof, shall be committed to gaol by two justices for three months, and shall forfeit to the king the treble value of the arms. 1 *W. c. 15. f. 6.*

5. And every person who shall discover such arms or ammunition, so as they shall be seized, shall have a reward equal to the value thereof ordered by the sessions out of the goods of the offender, to be levied by distress. 1 *W. c. 15. f. 7.*

XXIX. Horses.

1. Every papist making default in not appearing, or not subscribing (as in the former section concerning armour) shall not have or keep in his possession, or in the possession of any other to his use, or at his disposition, any horse above the value of 5*l.* to be sold. And two justices may authorize any person, with the constable's assistance, to seize all such horses for the king's use. 1 *W. c. 15. f. 9.*

2. And if any person shall conceal, or assist in concealing, any such horse, he shall be committed by warrant of two justices to prison for three months, and shall forfeit to the king treble the value of such horse. 1 *W. c. 15. f. 10.*

XXX. Popish wife.

1. If any married woman being a popish recusant convicted, shall not conform in three months, she shall be committed to prison, by one of the privy council, or by the bishop, if she be a baroness; or, if under that degree, by two justices (1 *Q.*) until she shall conform, unless her husband shall pay to the king for her offence for every month 10*l.* or else the third part of his lands, so long as she shall continue out of prison. 7 *J. c. 6. f. 28.*

2. A wife being a popish recusant convict, her husband not being so, shall forfeit to the king two parts of her jointure and dower, shall not be executrix or administratrix of her husband, nor shall have any share of his goods and chattels. 3 J. c. 5. s. 13.

3. But if she hath been married (out of *England*) otherwise than according to the form of the church of *England*, she shall be disabled to claim any dower or jointure, or widow's estate, of her husband's lands; and shall have no part of his goods. 3 J. c. 5. s. 13. And if in *England*, the marriage shall be void. 26 G. 2. c. 33.

XXXI. *Heir of a popish recusant.*

If the heir of a popish recusant shall be under sixteen, at the death of such recusant, and shall after such age become recusant, he shall be charged with the penalties happening him by reason of such his ancestor's recusancy, until such time as he shall conform. 1 J. c. 4. s. 3, 4.

XXXII. *Protestant children of papists.*

If any popish parent, in order to the compelling his child being a protestant to change his religion, shall refuse to allow him a fitting maintenance, the lord chancellor may make order therein. 11 & 12 W. c. 4. s. 7.

XXXIII. *Oaths.*

1. By the toleration act, if any person being required by a justice of the peace, shall refuse to take the oaths of allegiance and supremacy, and to make and subscribe the declaration against popery of the 30 G. 2. he shall be committed by the said justice to prison; and, at the next sessions, if he shall again refuse to make and subscribe the said declaration, he shall be deemed and suffer as a popish recusant convict. s. 12.

2. And by the 1 G. s. 2. c. 13. Two justices may summon any person whom they shall suspect to be disaffected, by writing under their hands and seals to appear before them at a time prefixed, to take the oaths of allegiance, supremacy, and abjuration: which summons shall be served on such person, or left at his dwelling house, or usual place of abode, with one of the family there; and if such person shall neglect or refuse to appear, then, on due proof made upon oath of serving the said summons,

they shall certify the same to the next sessions, to be there recorded: And if such person shall neglect or refuse to appear and take the oaths at the said sessions (his name being publicly read at the first meeting of the said sessions), he shall be taken and adjudged a popish recusant convict. And the same shall be from thence certified by the clerk of the peace, into the chancery, or king's bench, to be there recorded. *f. 10, 11.*

XXXIV. Minister to present papists.

Ministers shall present popish recusants to the bishop, every year before *June 24.* Can. 114.

XXXV. Recusants conforming.

1. A recusant conforming shall be discharged of the penalties which he might otherwise sustain in respect of his recusancy. *1 J. c. 4. f. 2.*

2. And by the 11 G. 2. c. 17. Papists conforming to the protestant religion, and taking the oaths, and subscribing the declaration of the 30 C. 2. in the chancery, king's bench, or quarter sessions, (to be there recorded,) shall have their estates freed of the disabilities incurred before such conforming. *f. 1, 2, 3, 4.*

3. And a recusant convicted having conformed, shall at least once a year receive the sacrament in the parish church, on pain of forfeiting for the first year 20 l. for the second 40 l. and for every year after 60 l. half to the king, and half to him who shall sue in the courts at *Westminster*, or at the assizes, or sessions. *3 J. c. 4. f. 2, 3.*

And at the sessions where an indictment for such offence is taken, the justices shall have power to make proclamation, by which it shall be commanded, that the body of the offender shall be rendred to the sheriff, bailiff, or gaoler, before the next sessions; And if he shall not appear of record next sessions, then upon such default recorded, he shall stand convicted. *f. 7.*

And no indictment or other proceeding shall be reversed for want of form, nor by any thing but by direct traverse to the point of not receiving the sacrament. *f. 16.*

But the husband shall not be charged with a penalty for the wife's offence in not receiving the sacrament; nor shall the wife be chargeable for not receiving during her marriage. *f. 40.*

XXXVI,

XXXVI. Ecclesiastical jurisdiction.

It is generally provided in the foregoing acts, that nothing therein shall take away or abridge the authority or jurisdiction of the ecclesiastical censures.

Note; The oaths and declarations abovementioned, are inserted at large in the title Oaths.

Posse comitatus. See Arrest.

Post.

1. **N**O person shall be capable of exercising any employment relating to the post office, or any branch thereof, or be any way concerned in receiving, sorting, or delivering of letters, before he shall have taken the following oath, before a justice of the peace where he resides :

I A. B. do swear, that I will not wittingly, willingly, or knowingly open, detain, or delay any letter or letters, packet or packets, which shall come into my hands, power, or custody, by reason of my employment in or relating to the post office; except by the consent of the person or persons to whom the same is or shall be directed, or by an express warrant in writing under the hand of one of the principal secretaries of state for that purpose; or except in such cases, where the party or parties to whom such letter or letters, packet or packets shall be directed, or who is or are chargeable with the payment of the port or ports thereof, shall refuse or neglect to pay the same, and except such letters or packets, as shall be returned for want of true directions, or when the party or parties to whom the same is or shall be directed, cannot be found: And that I will not any way imbezil any such letter or letters, packet or packets, as aforesaid. 9 An. c. 10. s. 41.

And if any person shall do any thing contrary to the said oath, he shall forfeit 20 l. and his office. s. 40.

2. And persons appointed from time to time to measure the post roads, shall be sworn to perform the same, according to the best of their skill and judgment, before a justice of the peace, who shall make a certificate thereof

Measurer's oath

Rates of postage.

in writing, to be entred in the general post office, without fee. 9 *An. c. 10. f. 12.* 5 *G. 3. c. 25. f. 9, 10.*

3. The rates or prices for the carriage of letters, shall be according to the several rates and sums following :

For every single letter, not exceeding one whole post stage from the office where the letter may be put in, 1 d ; double letter, 2 d ; treble, 3 d ; an ounce, 4 d ; and so in proportion. 5 *G. 3. c. 25. f. 5.*

Above one post stage, and not exceeding two : a single letter, 2 d ; double, 4 d ; treble, 6 d ; an ounce, 8 d ; and so in like proportion. *id.*

Above two post stages, and not exceeding 80 miles from the general post office : a single letter, 3 d ; double, 6 d ; an ounce, 12 d. 9 *An. c. 10. f. 30.*

Above 80 miles : single letter, 4 d ; double, 8 d ; an ounce, 1s. 4 d ; and so in proportion. *id.*

In like manner, there are different rates appointed by the several acts to and from foreign parts, according to the distance, or difficulty of conveyance. And all masters of ships or vessels bringing letters from abroad, shall deliver the same (except in the case of quarentine) at the post office, before they break bulk ; for which they shall receive 1 d extraordinary for each letter. 5 *G. 3. c. 25. f. 3, 4.*

Bills of exchange written on the same piece of paper with a letter, and several letters to several persons written on the same piece of paper, shall pay as so many distinct letters. 6 *G. c. 21. f. 51.*

And writs or other proceedings at law, inclosed, or written on the same piece of paper with a letter, shall pay as so many distinct letters. 26 *G. 2. c. 13. f. 6.*

But merchants accounts not exceeding one sheet, bills of exchange, invoices, bills of lading, (sent or brought over sea, 6 *G. c. 21. f. 52.*) shall be allowed without rate in the price of the letters. 9 *An. c. 10. f. 13.*

But patterns or samples of goods, or pieces of any thing, though not paper, inclosed in a letter, or affixed thereto, if under an ounce weight, shall pay as a double letter. 26 *G. 2. c. 13. f. 7.*

Penny post.

4. Within the limits of the penny post in *London*, shall be paid 1 d (at putting in, and 1 d at delivery, 4 *G. 2. c. 33.*) 9 *An. c. 10. f. 6.*

And the postmaster general, and his deputies, may appoint a penny post office in any city or town and places adjacent, where they shall judge convenient ; and may charge therein the same rates, as within the limits of the penny post office in *London*. 5 *G. 3. c. 25. f. 11.*

Provided,

Provided, that no parcel shall be carried by the penny post, exceeding the weight of four ounces; unless it be carrying to or from the general post office. *f. 14.*

5. And none but the postmaster shall carry letters; On None but the pain of 5*l* for every offence, and 100*l* a week besides; postmaster to carry letters. half to the king, and half (with costs) to him that shall sue in any court of record. *9 An. c. 10. f. 17, 19.*

Except letters carried *gratis* by carriers or shipmasters with goods, instruments out of any court, and letters sent by friends in their journey, or by a special messenger. *id. f. 2.*

And except in the two universities; to and from which, letters may be sent, in manner as heretofore hath been used. *f. 32.*

6. No letters or packets shall be exempted from postage; Exemptions from postage. Except such as shall be sent from or to the king:

And such, not exceeding the weight of two ounces, as shall be sent, during the sitting of parliament, or within 20 days before or after any summons or prorogation; which shall be signed, on the outside thereof, by any member, and whereof the whole superscription shall be written by him (or in case of bodily infirmity, by some person by him appointed, of which he shall give notice to the postmaster general):

Or directed to any member of either house of parliament at any of the places of his usual residence, or at the place where he shall be at the time of delivery thereof, or at the house of parliament, or the lobby of either house:

Or to the offices of the treasury, admiralty, war office, general post office; secretaries of state, paymaster general of the forces, clerk of the parliaments, clerk of the house of commons; or upon his majesty's service (indorsed by the proper officer). *4 G. 3. c. 24. f. 1, 4. 5 G. 3. c. 25. f. 26.*

Also this shall not extend to printed votes or proceedings in parliament, or printed news papers, sent without covers, or in covers open at the sides, signed on the outside by any member of parliament, or directed to a member at any place whereof he shall have given notice to the postmaster general. *4 G. 3. c. 24. f. 5.*

Also clerks in the offices of the secretaries of state and post office, being thereunto licensed by the secretaries or postmaster general respectively, may continue to frank votes and news papers as heretofore hath been usual; provided the same be sent without covers, or in covers open at the sides. *f. 6.*

But if any paper or other thing be inclosed in such printed paper, or any writing be thereon, except the superscription; the whole shall be charged with postage.

f. 7.

Forging franks.

7. If any person shall counterfeit the handwriting of any person in the superscription, in order to avoid the payment of postage; he shall be guilty of felony, and transported for seven years. 4 G. 3. c. 24. *f. 8.*

Post boy loitering upon the road.

8. If any post boy shall quit the mail, before his arrival at the next stage; or shall suffer any other person (except the person employed to guard the mail) to ride on the horse or carriage; or shall loiter on the road, or shall not in all possible cases convey the mail after the rate of six miles an hour at least: he shall, on conviction by confession or oath of one witness before one justice, be sent to the house of correction, to be there kept to hard labour, not exceeding one month, nor less than 14 days. 5 G. 3. c. 25. *f. 20.*

Unlawfully collecting letters.

9. And if any post boy shall by himself, or in combination with others, unlawfully collect any letters, or convey or cause them to be conveyed; he shall, on conviction by confession or oath of one witness before one justice, forfeit for every letter or packet 10s. to the informer; if not forthwith paid on conviction, to be committed to the house of correction to hard labour, not exceeding two months, nor less than one. 5 G. 3. c. 25. *f. 21.*

Imbezilling money for letters post-paid.

10. If any person, intrusted to take in letters, shall imbezzle, or apply to his own use, any money by him received for postage; or shall destroy any letter so by him taken in; or shall not duly account for the money received by him for advanced postage: he shall be deemed guilty of felony. 5 G. 3. c. 25. *f. 19.*

Money for postage how to be levied.

11. All sums, not exceeding 5l. that shall be due from any person for letters, or which shall be received for the carriage of letters without answering the same to the receiver general, shall be recovered before justices of the peace in the same manner as small tithes: And such debt shall be preferable in payment, before any debt to any private person. 9 An. c. 10. *f. 30.*

Stealing bills or other securities for money out of letters.

12. If any person, employed in the business of the post office, shall secrete, embezzle, or destroy any letter or packet, containing any bank note, bank post bill, bill of exchange, exchequer bill, South-sea or India bond, dividend warrant of the bank or other company, navy or victualling bill, seaman's ticket, state lottery ticket, goldsmith's

smith's note for the payment of money, or other bond or warrant, bill, or promissory note for payment of money, or American provincial bill of credit; or shall steal or take the same out of any letter or packet: he shall be guilty of felony, and suffer death as a felon. 5 G. 3. c. 25. f. 17.

13. If any person shall rob any mail, although the same shall not appear to be a taking from the person, or in the highway, or in a dwelling house or outhouse belonging to a dwelling house, and although it shall not appear that any person was put in fear; he shall, nevertheless, be guilty of felony, and suffer death as a felon. 5 G. 3. c. 25. f. 18.

14. The postmasters, and no other person, shall provide horses and furniture, to let to hire to persons riding post. 9 An. c. 10. f. 5.

(But this shall not extend to chaises duly licensed, with horses to draw the same, and horses to accompany persons carried in such chaises. 22 G. 2. c. 25.)

And they may charge 3d a mile for each horse riding post, and 4d a mile for the person riding as guide; and shall not charge for any bundle or parcel of goods not exceeding 80lb weight, to be laid on the horse rid by the guide; and shall not be obliged to carry above that weight. 9 An. c. 10. f. 14.

But if any postmaster doth not or cannot furnish persons riding post with horses, in half an hour after demand; such persons may furnish themselves elsewhere (provided that they take no horses without the owner's consent); and the postmaster in such case shall forfeit 5l; half to the king, and half to him that shall sue, with full costs. f. 21, 28.

15. No postmaster shall, by word, message, or writing, or in any other manner, endeavour to persuade any elector from giving his vote for the choice of any person to serve in parliament; on pain of 100l; half to the informer, and half to the poor, and likewise of being incapacitated. 9 An. c. 10. f. 44.

Postmaster not to meddle in elections.

Pound-breach. See Distress.

Powder for the hair. See Excess.

Praemunire.

Præmunire.

What it is.

1. **P RÆ M U N I R E** is so called from a word in the writ, *Præmunire facias præfatum A. B. quod tunc sit coram nobis, &c.* where *præmunire* is used for *præmonere*, to warn the person to appear, as is directed in the statute of 27 *Ed. 3. c. 1.* hereafter following. 1 *Inst.* 129.

Power of justices of the peace therein.

2. Notwithstanding that *præmunire* is not within the letter of the commission of the peace, yet inasmuch as it is against the peace of the king and of the realm, any justice of the peace may, either on his own knowledge, or the complaint of others, cause any person to be apprehended for such offence; and he may take the examination of the person so apprehended, and the information of all who can give material evidence against him, and put the same in writing, and bind over the witnesses to the king's bench or gaol delivery; and certify his proceedings to the same court to which he shall bind over such informers. 2 *Haw.* 39. *Hale's Pl.* 168.

Impeaching judgments in the king's courts, a *præmunire*.

3. By the 27 *Ed. 3. c. 1.* called the statute of provisors, They who shall draw any out of the realm in plea, whereof the cognizance pertaineth to be king's court, or which do sue in any other court, to defeat or impeach the judgments given in the king's courts, shall have a day, containing the space of two months, by warning to be made to them, by the sheriffs or other officers, to appear to answer in their proper persons for the contempt: And if they come not at the said day in their proper person to be at the law, they, their procurators, attornies, executors, notaries, and maintainers, shall from that day forth be put out of the king's protection, and their lands, goods, and chattels forfeit to the king, and their bodies wheresoever they may be found shall be taken and imprisoned, and ransomed at the king's will. And upon the same a writ shall be made, to take them by their bodies, and to seize their goods, lands and possessions, into the king's hands. And if it be returned, that they be not found, they shall be put in exigent, and outlawed.

Suing out foreign process a *præmunire*.

4. And by the 16 *R. 2. c. 5.* commonly called the statute of *præmunire*, and to which the several subsequent statutes do refer; both those who pursue, or cause to be pursued, in the court of *Rome*, or elsewhere, any processes

processes or instruments, or other things whatsoever which touch the king, against him, his crown and regality, or his realm; and also those who shall bring, receive, notify, or execute them; and their fautors and abettors, shall be out of the king's protection; and their lands and tenements, goods and chattels, forfeit to the king; and they shall be attached by their bodies, if they may be found, and brought before the king and his council, there to answer; or process shall be made against them by *præmunire facias*, in manner as it is ordained in other statutes of provisors.

And in these two statutes, as above recited, are contained the pains and penalties of what is called a *præmunire*.

5. And since these acts it hath been adjudged, that a suit in the ecclesiastical court (as for debt) was in case of *præmunire*. And that a person suing in the ecclesiastical court, for the forgery of a will, doth incur the danger of a *præmunire*; because the party grieved might have his remedy by the common law. Also judgment against the defendant was given in a *præmunire*, for suing for tithes in the ecclesiastical court, alledging the same to be severed from the nine parts. *3 Inst.* 120, 121. But it seemeth, that a suit in that court, for a matter which appears not by the libel itself, but only by the defendant's plea, or other matter subsequent, to be of temporal cognizance, is not within the statute; because it appears not that either the plaintiff or judge knew it to be so. *1 How.* 51, 52.

6. By the 25 *H. 8. c. 20.* Refusing to elect or consecrate the person nominated by the king to a bishoprick, is made a *præmunire*.

7. By the 26 *H. 8. c. 14.* No suffragan shall exercise any jurisdiction, otherwise than by the bishop's commissions, on pain of a *præmunire*.

8. To delay a suit on the statute of monopolies, 21 *J. c. 3.* shall be a *præmunire*. *f. 12.*

9. By the 13 *C. 2. c. 1.* To affirm maliciously or advisedly, by speaking or writing, that both or either houses of parliament have a legislative power without the king is a *præmunire*.

10. By the 31 *C. 2. c. 2.* No subject shall be sent a prisoner out of the realm, on pain of a *præmunire*.

11. By the 6 *An. c. 7.* If any person shall maliciously and directly, by preaching, teaching, or advised speaking affirm, that the pretender hath any right to the crown, or any

Suing for temporal matters in the spiritual court, a *præmunire*.

Refusing to elect or consecrate a bishop.

Suffragans exceeding their commission.

Delaying a suit on the statute of monopolies.

Affirming that the parliament can make laws without the king.

Sending prisoners out of the realm.

Affirming that the pretender hath any right to the crown.

any other person otherwise than as by the acts of parliament, he shall incur a præmunire.

Other præmunires.

12. The offences above specified are such as do not fall in with the other titles of this book. Other offences incurring a præmunire, are inserted under the titles to which they more properly belong; as in the titles, *Oaths, Gunpowder*; and especially in the title *Po-pery*, under which there are many offences of this kind, occasioned by the papal incroachments from time to time in this realm,

Judgment in præmunire.

13. The judgment in præmunire is, that the defendant *shall be from thenceforth out of the king's protection, and his lands and tenements, goods and chattels forfeited to the king, and that his body shall remain in prison at the king's pleasure.* 1 Inst. 129.

Out of the king's protection] So odious was this offence formerly, that a man who was attainted of the same, might have been slain by any one without danger of law: because it was provided by law, that a man might do to him as to the king's enemy, and a man may lawfully kill an enemy: and therefore by the 5 *El. c. 1.* it is enacted, that it shall not be lawful for any one to slay any person attainted in or upon a præmunire. 1 Inst. 130.

But he is so far out of the king's protection, that he is disabled to bring an action for any injury whatsoever. And no one, knowing him guilty, can with safety give him aid, comfort, or relief. 1 Inst. 129, 130. 1 *Haw. 55.*

And Mr. *Hawkins* says it has been questioned, whether he hath a right to demand surety of the peace. But *Lambard* and *Dalton*, which are the authorities he cites for it, incline to think that he hath such right. *Lambard* alleges for it the statute of the 5 *El.* abovementioned; and *Dalton* asserts it without doubting. *Lamb. 80. Dalt. 272.* 1 *Haw. 126.*

Lands and tenements — forfeited] Yet tenant in tail shall only forfeit lands during life: for albeit the statute of the 16 *R. 2. c. 5.* enacteth, that lands and tenements shall be forfeited, that must be understood of such an estate as he may lawfully forfeit, and that is during his own life. 1 Inst. 130.

Corruption of blood.

14. Attainder in præmunire worketh no corruption of blood. 1 Inst. 391.

Presentment.

Presentment.

A Presentment is that which the grand jury find and present to the court, without any indictment delivered to them; which is afterwards reduced into the form of an indictment, and in nothing else differs from an indictment.

There are other presentments of churchwardens, constables, surveyors of the highways, and justices of the peace; all which may be seen under their proper titles.

Prison and prisoner. See **Gaol**.

Prison-breaking.

IT seemeth that at the common law all prison breaches were felonies, if the party were lawfully in custody for any cause whatsoever. 2 *Haw.* 123.

But by the following statute, which is called the statute *de frangentibus prisonam*, the severity of the common law is moderated; in the explication of which statute, will be contained the whole learning relating to this subject.

The statute is this: *Concerning prisoners which break prison, the king willeth and commandeth, that none that breaketh prison shall have judgment of life or member, for breaking of prison only, except the cause for which he was taken and imprisoned did require such judgment, if he had been convicted thereupon, according to the law and custom of the realm.* 1 Ed. 2. st. 2.

Concerning prisoners which break] Therefore if the prison be broken by a stranger, and not by the prisoner, or by his procurement, this is no felony in the prisoner. *Hale's Pl.* 108.

Which break prison] It seems clear, that any place whatsoever, wherein a person under a lawful arrest for a supposed crime, is restrained of his liberty, whether in the stocks, or street, or in the common gaol, or the house of a constable, or private person, is properly a prison within this

Prison-breaking.

this statute; for imprisonment is nothing else but a restraint of liberty. 2 *Haw.* 124.

And therefore this extendeth as well to a prison in law, as to a prison in deed. 2 *Inst.* 589.

But there must be an actual *breaking*; for if the door be open, and he goes out, it is not felony, but a misdemeanor only. 2 *Inst.* 589. 2 *Haw.* 125.

But if the prison be fired without the privity of the prisoner, he may lawfully break it to save his life. *Hale's Pl.* 108.

Also it seems that no breach of prison will amount to felony, unless the prisoner escape. 2 *Haw.* 125.

That none that breaketh prison shall have judgment of life or member] That is, shall be guilty of felony. But nevertheless he is still punishable as for a high misprision, by fine and imprisonment; for it cannot be thought the meaning of the statute, in ordaining that such offences shall not be punished as capital ones, to intend, that they shall not be punished at all. 2 *Haw.* 128.

Nevertheless, by the 3 *Ed.* 1. c. 15. Those who have broken prison are not *bailable* by justices of the peace; and that for two reasons: 1. Because it carries a presumption of guilt. And, 2. Because it is a superadded offence to the former for which they stood committed. 2 *H. H.* 133.

Except the cause for which he was taken and imprisoned did require such judgment] This is to be intended of a *lawful* cause; and therefore *false imprisonment* is not within this act. 2 *Inst.* 590.

Imprisonment is a restraint of a man's liberty under the custody of another, by lawful warrant, in deed, or in law. Lawful warrant is, either when the offence appeareth by matter of record, as when the party is taken upon an indictment; or when it doth not appear by matter of record, as when a felony is done, and the offender by a lawful *mittimus* is committed to gaol for the same: But between these two cases there is a great diversity; for in the first case, whether any felony were committed or no, if the offender be taken by force of a *capias*, the warrant is lawful, and if he break prison it is felony, altho' no felony were committed; but in the other case, if no felony be done at all, and yet he is committed to prison for a supposed felony, and break prison, this is no felony, for there is no *cause*. 2 *Inst.* 590.

So that the cause must be just and not feigned, for things feigned require no judgment: Thus if a man give another a mortal wound, for which he is committed to prison, and breaketh prison, and the other dieth of the wound within the year, this death hath relation to the stroke; but because relations are but fictions in law, and fictions are not here intended, this prison-breaking is not felony. 2 *Inst.* 591.

So that the offence for which the party was imprisoned must be a capital one at the time of the offence, and not become such by a matter subsequent. 2 *Haw.* 126.

And the cause must be expressed in the *mittimus*, altho' not so certainly as in an indictment, yet with such convenient certainty as it may appear judicially that the offence requireth such judgment; as, not for felony generally, but for felony in stealing such a horse, and the like. 2 *Inst.* 591.

But if the offence for which the party is committed, be supposed in the *mittimus* to be of such a nature as requires a capital judgment, yet if in the event it be found to be of an inferior nature, and not to require such a judgment, it seems difficult to maintain, that the breaking of the prison, or a commitment for it, can be felony; for the words of the statute are, *except the cause for which he was taken and imprisoned did require such judgment*; and here it appears, that the offence which is the cause of his imprisonment, doth not require such a judgment. 2 *Haw.* 126.

But if a man be committed by lawful warrant, for suspicion of felony done, if he break, prison he may be indicted for that escape, albeit the commitment be for suspicion of felony, and yet no judgment can be given against him for suspicion, but for the felony itself, whereof he is suspected. 2 *Inst.* 592.

And an indictment that such a person *feloniously broke the prison* generally, is not good; but it ought to rehearse the specialty of the matter, that he being imprisoned for such or such a felony, broke the prison. 2 *Inst.* 591.

But if the party be only arrested for, and in his *mittimus* charged with a crime which doth not require judgment of life or member, as petit larceny, or homicide by self defence or by misadventure, and the offence be in truth no greater than the *mittimus* doth suppose it to

Prison-breaking.

be, it is clear from the express words of the statute, that a breaking of the prison cannot amount to felony. 2 Haw. 126.

But if a felony be made by a subsequent statute, and an offender is committed thereupon; if he breaks prison, it is felony. For since all breaches of prison were felonies by the common law, which is restrained by this statute in respect only of imprisonment for offences not capital; when an offence becomes capital, it is as much out of the benefit of the statute, as if it had always been so. Hal. Pl. 108. 2 Haw. 126.

Also it is said, that the party may be arraigned for prison-breaking, before he be convicted of the crime for which he was imprisoned; for that it is not material whether he were guilty of such crime or not; for the words of the statute are, *for which he was taken and imprisoned*. 2 Haw. 127.

But if he is first indicted and acquitted of the principal felony, he shall not be indicted for the breach of prison afterwards; for it being cleared that he was not guilty of the felony, he is in law as a person never committed for felony, and so his breach of prison is no felony. 1 H. H. 612.

But the gaoler shall not be punished as a felon for the party's breach of prison, unless he voluntarily consented to it; but it seems to be a negligent escape in the gaoler, for which he may be punished by fine and imprisonment, because there wanted either that due strength in the gaol, or that due vigilance in the gaoler or his officers, that should have prevented it: and if gaolers might not be punished for this as a negligent escape, they would be careless either to secure their prisoners or to retake them that escape. 1 H. H. 601.

And therefore if a criminal endeavouring to break the gaol, assault his gaoler, he may be lawfully killed by him in the affray. 1 Haw. 71.

Indictment for prison-breaking, by escaping from a constable.

THE jurors for our lord the king upon their oath present,
that A. C. late of—yeoman, constable of our said
lord the king in and for the town of—in the said county,
on the—day of—in the—year of the reign
of—at—within the town and constablewick afore-
said

said in the county aforesaid, did take and arrest one A. O. late of——labourer, on suspicion of having committed a certain felony, in feloniously taking and carrying away one black gelding, the property of——of the value of——and thereupon he the said A. O. under the custody of him the said A. C. the constable aforesaid, was brought before J. P. esquire, one of the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, and he the said J. P. by his warrant directed to the said A. C. and others, did command the said A. C. to carry and convey the said A. O. to the gaol of our said lord the king at——in the county aforesaid, there to be safely kept, until he should be lawfully delivered from thence; by virtue of which said warrant, he the said A. O. was taken and detained by him the said A. C. and as he the said A. C. was conveying and carrying him the said A. O. to the gaol aforesaid, afterwards, to wit, on the——day of——in the year aforesaid, he the said A. O. at——aforesaid in the county aforesaid, with force and arms, did feloniously break away and escape from and out of the custody of him the said A. C. the constable aforesaid, against the will of him the said A. C. and against the peace of our said lord the king, his crown and dignity.

Indictment for breaking out of gaol.

THE jurors for our lord the king upon their oath present, that A. O. late of——in the county aforesaid, labourer, on the——day of——in the——year of the reign of——at——aforesaid in the county aforesaid, was arrested, imprisoned, and detained, in the gaol of our said lord the king, for a certain felony by him committed, that is to say, for the feloniously taking and carrying away one black gelding, the property of——of the value of——and that he the said A. O. on the——day of——in the year aforesaid, with force and arms, the aforesaid gaol of our said lord the king at——aforesaid in the county aforesaid feloniously did break, and thereby did escape from and out of the said gaol, against the peace of our said lord the king, his crown and dignity.

Privileged place. See Rescue

Process.

Process by the
commission.

1. **BY** the commission of the peace, the justices in sessions have power to make and continue processes upon indictments, against the persons indicted, until they can be taken, surrender themselves, or be outlawed.

Process on in-
dictments taken
in the tourn.

2. And by the statute of the 1 Ed. 4. c. 2. Indictments and presentments taken in the sheriff's tourn, shall be delivered to the next sessions, who may award process thereupon, in like form as if they had been taken before themselves.

Process by jus-
tices out of ses-
sions.

3. And the law also in several cases in express words directs process to be made by justices out of sessions; and in other cases by necessary implication: as where a statute doth give power to justices out of sessions to inquire, hear, and determine, there they may make process to cause the party to come and answer, otherwise they cannot proceed to hear and determine; and this may be either before or after presentment or indictment as the several statutes do require: Before presentment or indictment it is called a *warrant*; after presentment or indictment it is properly called *process*. Dalt. c. 193.

Process, what.

4. Commonly an indictment, being but an accusation against a man, is of no force but only to put him to answer unto it. And hereof all process hath the name, because it *proceedeth* or goeth out upon former matter either original or judicial. Lamb. 519.

No need of pro-
cess, if the party
is present.

5. And it seemeth plain, from the nature of the thing, that there can be no need of process, where the defendant is present in court, but only where he is absent. 2 Haw. 281.

To be in the
king's name.

6. The process ought to be in the name of the king. And if it issue from the king's bench, it ought to be under the teste of the chief justice; and if it issue from any other court, there seems to be the same reason, that it ought to be under the teste of the first in the commission. 2 Haw. 283.

When return-
able.

7. Upon an indictment in sessions, (for a misdemeanor, not being felony) there must be 15 days between the teste and return of the *venire*; but if the entry be by consent of parties, the *venire* may be returnable *immediate*, and the trial be the same day. 3 Salk. 371.

Process for fe-
lony.

8. Process on an indictment or appeal of death, is one *capias*, and then an exigent: But in the case of any other felony,

felony, then by the 22 Ed. 3. c. 14. two *capias*'s, and then an exigent. Hal. Pl. 209. 2 Haw. 303. Crown Circ. 31.

9. The ordinary processes upon all indictments of trespass against the peace, or of other offences against penal statutes, not being felony, or a greater offence, are as follows; First, if the offender be absent, a *venire facias*, which is but in nature of a summons to cause the party to appear, shall be awarded, except where other process is directed by some statute. 2 Haw. 283. Process under felony.

If it appear by the return to such *venire*, that the party hath lands in the county, whereby he may be distrained, the *districe infinite* shall be awarded from time to time, till he do appear; and by force hereof he shall forfeit on every default so much as the sheriff shall return upon him in issues. But if a *nihil* be returned on such a *venire*, then three *capias*'s, that is, a *capias*, *alias*, and *pluries*, shall issue. 2 Haw. 283.

Where the inhabitants of a parish are indicted or presented, the process is first a *venire*, then a *distringas*. Crown Circ. 21.

10. By the 21 J. c. 4. by which all popular actions on penal statutes are restrained to their proper counties, the like process in every popular action, bill, plaint, suit, or information, on a penal statute, before the quarter sessions (or higher courts) shall be awarded as in an action of trespass *vi & armis* at the common law. Process on informations.

And consequently, the process in all such suits must be by attachment or *pone per vadios*; and after by *districe infinite*, where by the return the party appears to be sufficient, otherwise by *capias*. 2 Haw. 284.

11. If a defendant appear to an indictment of felony, and afterwards before issue joined make an escape, either from his bail, or from prison; the common *capias*, *alias*, and *pluries* shall be awarded against him, unless there had been an exigent before; in which case a new exigent shall be awarded. 2 Haw. 285. Process on an escape.

12. The exigent shall not be awarded against accessaries, until the principal shall be attainted. 3 Ed. 1. c. 14. Process against accessaries.
2 Haw. 306.

13. By the 8 H. 6. c. 10. On indictments for treason, felony, or trespass, against persons dwelling in other counties than where the indictment is taken, before any exigent awarded, presently after the first writ of *capias* awarded and returned, another writ of *capias* shall be awarded, directed to the sheriff of the county whereof the person indicted was supposed
Process in a foreign county.

posed to be conversant by the same indictment, returnable before the same justices or others before whom he is indicted, at a certain day, containing the space of 3 months from the date of the said last writ, where the counties are holden from month to month; and where they are holden from 6 weeks to 6 weeks, he shall have 4 months, until the return of the same writ: by which writ of second *capias* it shall be commanded to the same sheriff, to take the person indicted by his body, if he can be found within his bailiwick, and if he cannot be found within his bailiwick, that the said sheriff shall make proclamation in two counties before the return of the same writ, that he which is so indicted, shall appear before the said justices or others, in the county, liberty, or franchise where he is indicted, at the day contained in the said last writ of *capias*, to answer to the king of the felony, treason, or trespass, whereof he is so indicted: After which second writ of *capias* so served and returned, if he which is so indicted come not at the day of the same writ of *capias* returned, the exigent shall be awarded. And every exigent and outlawry otherwise awarded or pronounced shall be void.

And if any such indictment shall be removed by *certiorari*, then before the exigent awarded, presently after such first *capias* returned, another writ of *capias* shall be directed as before, returnable before the king in his bench.

But this shall not extend to indictments, taken in the county of Chester.

Also if any person be indicted of felony or treason, and at the time of the same felony or treason supposed was conversant within the county whereof the indictment maketh mention, the like process shall be made against the person so indicted, as hath formerly been used; that is, without sending process into the other county.

But every person indicted in the form aforesaid, after he is duly acquit by verdict, shall have an action upon his case, against the procurer of such indictment; and if such procurer be attainted thereof, the plaintiff shall recover treble damages. Which seemeth to be upon account of the distance at which he is supposed to live, from the place where he is indicted, and consequently his extraordinary trouble in that behalf.

Dwelling in other counties] If the defendant be named of B. and late of C. there is no need of any *capias* to the sheriff of the county where C. lies, because it appears that the defendant is at present conversant at B. But if a defendant be named of no certain place at present, but only
late

late of *B.* and late of *C.* and late of *D.* being all of them in counties different from that wherein the prosecution is commenced, a *capias* shall go to the sheriff of every one of those counties. 2 *Haw.* 306.

Shall be void] Not utterly void, but only voidable by writ of error. 2 *Haw.* 306.

County of Chester] But it may be awarded into the counties palatine of *Lancaster* and *Durham*; and it seems that it shall be directed to, and returned by the chancellor of *Lancaster*, or bishop of *Durham*: And it hath been said, that if he will not return it, the exigent may be awarded as well as if he had returned it; because the court (of the sessions at least) cannot compel him to return it, and the prosecution might be unreasonably delayed, if the proceedings were to be stayed till he should return it. 2 *Haw.* 305. *Hal. Pl.* 209, 210.

Mr *Marrow* saith, that by the equity of this statute, if a person, indicted in one county is imprisoned in another, the justices may award an *habeas corpus* to remove him before themselves. *Lamb.* 526.

14. Concerning the execution of the process, it is laid down as a general rule, that where-ever the king is a party to the suit (as he certainly is to all informations and indictments), the process ought to be executed by the sheriff himself, and not by the bailiff of any franchise, whether it have the clause *non omittas* or not, and whether the defendant be within a franchise or in the county at large, for the king's prerogative shall be preferred to any franchise: But it is said, that this is to be intended only where in the grant of the franchise no mention is made of causes to which the king is a party. 2 *Haw.* 284. To be executed by the sheriff.

15. And if the party be in an house, if the doors be shut, and the sheriff (having given notice of his process) demand admittance, and the doors be not opened, he may break open the doors and enter to take the offender. 2 *H. H.* 202. Breaking open doors.

16. But no person, on the lord's day, shall serve or cause to be served any writ, process, or warrant, order, or judgment (except in cases of treason, felony, or breach of the peace); but the service thereof shall be void, and the person serving the same shall be liable to answer damages to the party grieved, in the same manner as if he had done it without any writ, process, warrant, order, or judgment at all. 29 *C. 2. c. 7. f. 6.* Process on a Sunday.

Process discontinued.

17. It seems to be agreed, that every suit, whether civil or criminal, and also every process in such suit against jurors, ought to be properly continued from day to day, from its commencement to its conclusion, without any the least gap or chasm; and the suffering any such gap or chasm is properly called a *discontinuance*; and the continuing the suit by improper process (as by a *capias* instead of a *distringas*), or by giving the parties an illegal day, is properly called a *miscontinuance*; and if the justices, before whom the matter is depending, do not come on the day to which it is continued, it is said to be *put without day*, and cannot be revived without a re-summons or re-attachment. 2 Haw. 298, 300.

Now process may be discontinued several ways. As, 1. Where the second is not tested on the very same day, on which the first is returnable. 2. Where there is a sessions intervening between the teste and the return of a *capias*, that the defendant may not be imprisoned an unreasonable time. But it is no objection to an *exigent*, that it is not returnable the next sessions, because it must allow time for five counties to be holden between its teste and return. 3. Where after issue or demurrer, the court gives the party a day to a distant sessions, without making any continuance to that immediately following. 4. Where the sessions to which the suit is continued is adjourned, and the suit is not adjourned accordingly. 5. Where any of the parties are described in any continuance of the suit, whether on the toll, or by process, by a name or addition variant from those in the original, tho' only in one letter. 6. Where a *venire* or *distringas* are issued, without any award on the roll to warrant them. 2 Haw. 298, 299.

And it seems generally to be taken as an undoubted principle, That a discontinuance by suffering a total chasm in the proceedings, whether on the roll, or in the process, by not giving a fresh continuance instantly upon the determination of the precedent, shall never be aided by any appearance or pleading over: But it is holden by the greater number of authorities, that if the original be good, and the defendant present in court, he shall be compelled to answer to such original, let the process whereon he came in, or the execution of it, be never so erroneous or defective, so that it never were discontinued; for the end of process is to compel an appearance, and the end being served, and a legal charge appearing against the defendant no way discontinued, the law will not so far regard a slip in the process, as to let the defendant out of court, in order only to have him brought in again in better form. 2 Haw. 300.

18. The

18. The processes (as well of *capias* as of outlawry) may be stayed by a *superfedeas* issuing from other justices (out of sessions) testifying that the party hath come before them, and hath found sureties for his appearance to answer to the indictment, or to pay his fine. *Dalt. c. 193.* Process stayed by putting in bail.

And it seemeth that even any one justice may bail persons indicted at the sessions, for any offence under the degree of felony; for that the statutes relating specially to the power of justices in granting bail, do not in this case seem to take away the power, which one justice had before the making of the said statutes. 2 *Haw. 103.*

19. Judgment of outlawry is given by the coroner, at the fifth county court, upon the party's not appearing to the *exigent* (which is a writ commanding the sheriff to cause the defendant (*exigi*) to be demanded from county court to county court, until he be outlawed). And such judgment is entered thus, *Therefore by the judgment of the coroner of our lord the king of the county aforesaid, he is outlawed.* 2 *Haw. 446.* Process of outlawry.

20. The word *outlaw* (*utlaghe*) *utlagatus*, cometh not immediately from the Latin *lex*, but derived to us through the Saxon *laga*, which signifieth *law*. And a person outlawed signifies one that is out of the protection of the king, and out of the aid of the law. Meaning of the word outlaw.

21. And a man which is outlawed is called outlawed, but a woman which is outlawed is called waived, and not *utlagata*; for that women are not sworn in leets or tornes, as men which are of the age of 12 or more are; and therefore men may be called *utlagati*, that is, *extra legem positi*, but women are *waviatæ*, that is, *derelictæ*, left out or not regarded, because they were not sworn to the law: wherein it is to be noted, that of antient time a man was not said to be within the law, that was not sworn to the law, which is intended of the oath of allegiance in the leet. 1 *Inst. 122.*

And hence it is, that a man under the age of 12 years, cannot be outlawed. 1 *Inst. 122.*

22. Process of outlawry lies in all indictments of treason or felony, and on all returns of a rescous; and also on all indictments of trespass with force and arms; and it seems probable, that it lies on an indictment of conspiracy, or deceit, or any other crime of a higher nature than a trespass with force and arms; but not on any indictment for a crime of an inferior nature. And it seems agreed, that it lies not on any action on a statute, unless it be given by such statute, either expressly, as in the case of a *præmunire*, or impliedly, For what outlawry may be.

pliedly, as where a recovery is given by an action wherein such process lay before, as on a writ of trespass for a forcible entry, on the 8 *H. 6. c. 9.* because the statute expressly gives a recovery by such writ, and such process lies in it by the common law. 2 *Haw. 302, 303.*

Outlawry proclaimed at the sessions.

23. In every *action personal* wherein any exigent shall be awarded out of any court, one writ of proclamation shall be awarded out of the same court, having day of teste and return as the writ of exigent shall have, directed and delivered of record to the sheriff where the defendant dwells; which writ of proclamation shall contain the effect of the action: And the sheriff shall make one proclamation in the open court, and another at the general quarter sessions where the defendant dwells, and another a month at least before the *quinto exactus*, by virtue of the said writ of exigent, at or near the most usual door of the church or chapel where the defendant shall be dwelling at the time of the exigent awarded, upon a *sunday* immediately after divine service. 31 *El. c. 3.*

Also, upon issuing any exigent out of any of the king's courts, against any person for a *criminal* matter, before judgment or conviction, there shall also issue a writ of proclamation, bearing the same teste and return, where the person in the record of proceeding is mentioned to inhabit, according to the form of the 31 *El. c. 3.* which writ of proclamation shall be delivered to the sheriff three months before the return of the same. 4 & 5 *W. c. 22. f. 4.*

Return of the outlawry.

24. If there are two coroners in a county, or more, one may execute the writ, as in case of an exigent, but the return must be in the name of the coroners. 2 *H. H. 56.*

And the return of the outlawry must be certain: It must shew where the county court was held, and in what county; and must return the day, and year of the king to every *exactus*. 2 *H. H. 203.*

And also the sheriff's name and office must be subscribed to the return of the exigent. 2 *H. H. 204.*

Capias utlagatum.

25. It is said, that the justices in sessions cannot issue a *capias utlagatum*, but must return the record of the outlawry into the king's bench, and there process of *capias utlagatum* shall issue. 2 *H. H. 52.*

But in *T. 10 f.* The opinion of all the court of common pleas was, that if one be outlawed before the justices of the peace on an indictment of felony, they may award a *capias utlagatum*; and so was the opinion of *Periam* chief baron, and all the court of the exchequer: for they that have power

to

to award process of outlawry, have also power to award a *capias utlagatum*, as incident to their authority and jurisdiction. 12 Co. 103.

26. If a person be outlawed at the suit of one man, all men shall take advantage of this personal disability. Consequences of outlawry; 1 Inst. 128.

But such disability abateth not the writ, but only disableth the plaintiff, until he obtain a charter of pardon. 1 Inst. 128.

27. Upon outlawry in treason or felony, the offender shall lose and forfeit as much as if he had appeared, and judgment had been given against him, as long as the outlawry is in force. 2 Haw. 446. For treason, or felony.

28. But the outlawry for a misdemeanor, doth not inure as a conviction for the offence, as it doth in cases of treason and felony; but as a conviction of the contempt for not answering, which contempt is therefore punished, not by fine as a conviction for the offence, but by forfeiture of goods and chattels for the contempt. K. and Tip-pin, 1 W. 2 Salk. 494. For an inferior offence.

29. The very issuing of the exigent, in case of treason or felony, gives to the king the forfeiture of the goods of the party, from the time of the teste of the writ of exigent: and the forfeiture by the exigent awarded stands, although the indictment be quashed, until there be a judgment of reversal on a writ of error; because the king's title being of record, must be avoided by a record. 2 H. H. 204, 205. Goods forfeited from the time of issuing the exigent.

30. And as the award of the exigent gives the forfeiture of the goods, so the outlawry gives the forfeiture or loss of the lands of the party outlawed, to wit, in case of outlawry of treason his lands are forfeited to the king, of whomsoever they are held; and in case of outlawry of felony, to the lord by escheat, of whom they are immediately holden. 2 H. H. 206. Lands forfeited from the time of the outlawry.

31. But it must be remembred, that the bare judgment of outlawry by the coroner, without the return thereof of record, is no attainder, nor gives any escheat; but it must be returned by the sheriff, with the writ of *exigi facias*, and the return indorsed. 2 H. H. 206. Or else it must be removed by certiorari: for the judgment given by the coroner in the county court is not matter of record, that court not being a court of record. 1 Inst. 288. But the outlawry must be first returned.

32. And by the outlawry all *personal* chattels are vested in the king by forfeiture; but *real* chattels, or freehold estates And after inquisition found.

estates are not vested in the king, till after inquisition found. 3 *Salk.* 262.

Whether it is
lawful to kill an
outlaw.

33. In ancient times no man could have been outlawed but for felony, the punishment whereof was death; and upon this account an outlawed man was called *wolfeshead*, because he might be put to death by any man, as a wolf that hateful beast might. But in the beginning of the reign of K. Ed. 3. it was resolved by the judges, for avoiding of inhumanity, and of effusion of christian blood, that it should not be lawful for any man but the sheriff, having lawful warrant, to put to death any man outlawed, though it were for felony; and if he did, he should undergo such pain of death, as if he had killed any other man: and so the law continueth to this day. 1 *Inst.* 28.

Judges of assize
may award execution of persons
outlawed before
justices of the
peace.

34. If a man be indicted before justices of the peace, and thereupon outlawed, and is taken and committed to prison, the justices of gaol delivery may award execution of this prisoner; for they are constituted to deliver the gaol. 4 *Inst.* 166. *Hale's Pl.* 158. 2 *H. H.* 35.

Clergy in cases
of outlawry.

35. Where clergy is allowable, it shall be as much allowed to one who is outlawed, as to one who is convicted by verdict or confession. 2 *Haw.* 343.

But a statute taking the benefit of clergy from those who shall be found guilty, doth not thereby take it from those who are outlawed. 2 *Haw.* 343.

But by the 3 & 4 W. c. 9. s. 2. *If any person be indicted of any offence, for which, by any former statute, he is excluded from clergy, upon conviction; if he shall be outlawed thereupon, he shall not have his clergy.*

By any former statute] Hereby it appears, that this extends not to offences made felonies by statutes subsequent to this statute. 2 *Haw.* 348.

Person outlawed
cannot be plain-
tiff.

36. Where a person is outlawed, the defendant may shew all the matter and outlawry returned of record, and demand judgment if he shall be answered, because he is out of the law, to sue an action during the time that he is outlawed. 1 *Inst.* 128.

Cannot be a ju-
ror.

37. It seems to be a good challenge of a juror, that he is outlawed, either for a criminal matter, or as some say, in a personal action; but not a principal challenge, but only to the favour, unless the record of the outlawry be produced. 2 *Haw.* 215, 417.

May be a wit-
ness.

38. But it seems clear, that outlawry in a *personal* action is not a good exception against a witness, as it is against a juror. 2 *Haw.* 443.

39. An outlawed person may make a will, and have executors or administrators. *Cro. El. 575.* May make a will.

And an executor may reverse the outlawry of the testator, where he was not lawfully outlawed. *1 Leon. 325.*

40. Outlawry may be reversed several ways; as by procuring a *superfedeas* and delivering it to the sheriff before the *quinto exactus*, or by shewing any matter apparent on record which makes the outlawry erroneous, as the want of an original, or the omission of process, or want of form in a writ of proclamation, or a return by a person appearing not to be sheriff, or a variance between the original and exigent or other process, or by a misnomer, or want of addition. *2 Haw. c. 50.* Reversing outlawry.

41. And upon a writ of error upon an outlawry in felony, the party outlawed must render himself in custody, and pray the allowance of the writ of error in person: and if the outlawry be reversed, he shall be put to answer the indictment. *2 H. H. 209.* In what case the party must appear personally to reverse it.

But by the 4 & 5 *W. c. 18.* one outlawed, except for treason or felony, need not appear in person to reverse an outlawry, but by an attorney. *2 Salk. 496.*

42. There is another kind of process out of a court of record, against offenders, called *attachment*, which is generally for contempt; which belongs to title *Attachment.* Other kinds of process.

The process against *jurors*, may be seen in the title *Jury.*

And the process against *witnesses*, in title *Evidence.*

Forms of process; and first of a *Venire.*

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the Faith, and so forth, To the sheriff of the county of Westmorland, greeting. We command you, that you omit not, by reason of any liberty in your bailiwick, but that you cause A. O. of——in your said county, yeoman, to come before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at——in your said county, on the——day of——next ensuing, to answer unto us upon certain articles presented against him the said A. O. And have you there then this precept. Witnesses J. P. and K. P. at——the——day of——in the——year of our reign.

And

And upon this *venire*, if the defendant be returned sufficient, and maketh default, then a *distringas* shall be awarded, and so the same process infinite, until he come in: But if a *nihil habet* be returned at the first, then after the *venire*, there shall go out a *capias*, alias, *pluries*, and *exigent*. Dalt. Sher. 160.

Form of a *Distringas*.

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth. To the sheriff of the county of—greeting. We command you, that you omit not, by reason of any liberty in your bailiwick, but that you enter the same, and distrain A. O. of—in your county, yeoman, by all his lands and tenements &c. and that you answer for the issues thereof &c. and that you have his body before our justices assigned [and so on, as before in the *venire*.]

But if a *nihil* (as hath been said) be returned at first upon the *venire facias*; then a *capias* shall issue, thus:

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth: To the sheriff of the county of—greeting. We command you, that you omit not, by reason of any liberty in your bailiwick, but that you enter the same, and take A. O. of—in your county, yeoman, if he shall be found in your bailiwick, and him cause to be safely kept; so that you have his body before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at—in your county, on the—day of—next ensuing, to answer unto us concerning divers trespasses, contempts, and offences, of which he is indicted. And have you there then this writ. Witness J. P. and K. P. at—the—day of—in the—year of our reign.

At which day A. S. knight, sheriff of the county aforesaid, returned that he is not found in his bailiwick, and he did not come. Therefore it is commanded as before.

Note; The cause why the entry is made, and he did not come, is, because the party may appear voluntarily, and so avoid the attachment or arresting of his body.

The *Alias Capias*.

GEORGE———To the sheriff———We command you, as we before commanded you, that you omit not———
(as before.)

At which day———(as before); and he did not come. Therefore it is commanded to the sheriff as it hath been often commanded, &c.

The *Pluries Capias*.

GEORGE &c. To the sheriff, &c. We command you, as we have often commanded you, that you omit not (as before)

At which day A. S. knight, the sheriff aforesaid, returned, that the aforesaid A. O. is not found in his bailiwick, and he did not come. Therefore it is commanded, that you cause to be demanded, &c.

The *Exigent*.

GEORGE &c. To the sheriff &c. greeting. We command you, that you cause A. O. of———in your county, yeoman, to be demanded, until, by the law and custom of our kingdom of England, he be outlawed, if he shall not appear; and if he shall appear, that then you take him, and cause him to be safely kept, so that you have his body before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanors in your said county committed, at the general quarter sessions of the peace of your county next after the feast of———next ensuing to be held, wheresoever in the same county the said sessions shall happen to be holden, to answer unto us of divers trespasses, contempts, and offences, of which he is indicted. And have you there then this writ. Witness Sir J. P. baronet at———in the said county, the———day of———in the———year of our reign.

At which day A. S. knight, sheriff of the county aforesaid returned, that at the county holden at———the———day of———in the———year of the reign of our lord the king that now is, and so at four other counties then next following, there holden, the aforesaid A. O. was demanded, and did not appear. Therefore by the judgment of the coroner of our said lord the king, in the county aforesaid, he was outlawed.

The

The Capias Uilagatum.

GEORGE &c. To the sheriff &c. greeting. We command you, that you omit not, by reason of any liberty in your county, but that you take A. O. late of—— in your county, labourer, if he shall be found within your county, and him cause safely to be kept, so that you have his body before the keepers of our peace and our justices assigned to hear and determine divers felonies, trespasses, and other misdemeanors in your county committed, at——the——day of—— to stand right in our court before our justices aforesaid, upon a certain outlawry against him the said A. O. promulged, at our suit, for certain felonies (or trespasses) whereof he was convicted the——day of——. And have you then there this writ. *Witnes &c.*

Profaneness. See Blasphemy.

Prophecies.

IF any person shall advisedly and directly advance, publish, and set forth by writing, printing, singing, or any other open speech or deed, any fond, fantastical, or false prophecy, upon or by the occasion of any arms, fields, beasts, badges, or such other like things accustomed in arms, cognizances, or signets, or upon or by reason of any time, year, or day, name, bloodshed, or war, to the intent thereby to make any rebellion, insurrection, dissension, loss of life, or other disturbance in the realm; and shall be convicted thereof before a judge of assize, or justice of the peace, within six months after the offence committed, he shall for the first offence be imprisoned for a year, and forfeit 10l. and for the second offence, shall be imprisoned for life, and forfeit his goods: half the forfeitures to the king, and half to him who shall sue for them in any court of record. 5 *El. c. 15.*

Mr. Barlow thinks that the carrying of white roses on the tenth of June, comes within the purview of this statute.

The intent of the act was, to abolish certain foolish and superstitious notions which prevailed in the times of ignorance, as were set forth in a statute made in the 33

H. 8.

H. 8. c. 14. reciting,—Where divers and sundry persons, making their foundation by prophecies, have taken upon them a knowledge (as it were) what shall become of them which bear in their arms, cognizance, or badge,—fields, beasts, fowls, or any other thing which hath been used or accustomed to be put in any of the same; or, in and upon the letters of their names, have devised, descanted, and practised to make folk think, that by their untrue guesses it might be known, what good or evil things should come, happen, or be done, by or to such persons as bore or had such badges or cognizances, or had such letters in their names; to the great peril and destruction of such noble personages, of whom such false prophecies have or should hereafter be set forth, whereby in times past many noblemen have suffered, and (if their prince would give any ear thereto) might hap to do hereafter: And therefore enacted, that he who should do so, should be guilty of felony without benefit of clergy.

This statute was repealed in the lump by the *1 Ed. 6. c. 12.* which repealed all statutes making any offences felony from the first year of the reign of king Henry the eighth. And the substance thereof was re-enacted, with a mitigation of the penalty, by the *3 & 4 Ed. 6. c. 15.* Which statute expiring, the *5 El. c. 15.* was enacted as above.

Protestant Dissenters. See Dissenters.

Publick Worship.

1. **I**Mpugners of the book of common prayer, of the 39 articles, of the rites and ceremonies of the church of England, of the episcopal government of the church, or of the form of ordering and consecrating archbishops and bishops, shall be *ipso facto* excommunicated, and not restored but upon repentance, and publick recantation.
Can. 4, 5, 6, 7, 8.

2. If any person shall speak unreverently of the sacrament of the lord's supper, he shall suffer imprisonment, and make fine and ransom at the king's will. And three justices (*1 Q.*) may take information by the oaths of two witnesses;
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Impugners of the rites of the church.

Speaking irreverently of the sacrament.

witnesses; and afterwards, at the sessions, may inquire thereof by the oaths of 12 men upon indictment. And they shall, at the sessions where the offender shall be indicted, direct a writ to the bishop to appear by himself or deputy at the trial. But no person shall be molested, but within three months after the offence committed. 1 Ed. 6. c. 1.

Penalty of 12 d. a Sunday for not resorting to church.

3. All persons, having no lawful or reasonable excuse to be absent, shall resort to their parish church or chapel, or upon reasonable let thereof, to some usual place where divine service shall be performed, according to the liturgy and practice of the church of *England*, upon every Sunday and holiday; on pain of punishment by the censures of the church, or of forfeiting 1 s. for every offence to the poor, to be levied by the churchwardens by distress. 1 El. c. 2. s. 14, 24. Except dissenters qualified by the act of toleration. 1 W. c. 18.

And he who is absent from his own parish church, shall be put to prove where he went to church. 1 Haw. 13.

And any justice of the peace, on proof unto him made (in one month after default in coming to church on *Sundays*) by confession, or oath of witness, may call the party before him; and if he shall not make a sufficient excuse, and due proof thereof, to the justice's satisfaction, such justice may give warrant to the churchwarden to levy 12 d. to the use of the poor, by distress. For want of distress, commitment till paid. 3 J. c. 4. s. 27, 28.

Rep. 9 & 10 Vict. c. 59.

Penalty of 20 l. a month, for not resorting to church.

4. Every person above the age of 16 years, who shall not repair to some church, chapel, or usual place of common prayer, being convicted thereof before the judges of assize, or justices in sessions, shall forfeit 20 l. a month, one third to the king, one third to the maintenance of the poor of the parish, and of the houses of correction, and of impotent and maimed soldiers, as the lord treasurer, chancellor, and chief baron of the exchequer shall order, and one third to him who shall sue in any court of record. If not paid in three months after judgment, he shall be imprisoned till he pay or conform himself to go to church. 23 El. c. 1. s. 5, 8, 11. 29 El. c. 6. s. 7.

And this penalty of 20 l. a month dispenseth not with the forfeiture of 12 d. a Sunday; for both may well stand together; and the 12 d. is immediately forfeited upon the absence of each particular day. 1 Haw. 13.

And every offender in not repairing to divine service, having been once convicted (and not conforming) shall pay

pay 20l. a month into the exchequer, in the term of *Easter* or *Michaelmas* which shall be next after such conviction; and also shall, without any other indictment or conviction, for every month after such conviction, so long as he shall not conform, pay into the exchequer in every *Easter* and *Michaelmas* term, as much as shall then remain unpaid, after such rate of 20l. a month: And if default shall be made in any part of such payment, the king may by process out of the exchequer, seize all the goods, and two parts of the land, of such offender. 29 *El. c. 6. f. 3, 4, 5, 6. 3 J. c. 4. f. 8, 9.*

Or the king may refuse the 20l. a month, tho' it be duly tendred, and seize two parts of the lands at his option. 3 *J. c. 4. f. 11.*

But copyhold lands are not within these statutes, in respect of the prejudice which would accrue to the lord, by the loss of his services. 1 *Haw. 14.*

And every person who shall usually on *sundays* have in his house divine service as established by law, and be thereat himself usually present, and shall four times a year go to the parish church or other common church or chapel, shall not incur any penalty for not repairing to church. 23 *El. c. 1. f. 12.*

And this also shall not extend to qualified protestant dissenters. 1 *W. c. 18.*

5. Every person who shall retain in his service, or shall relieve, keep, or harbour in his house any servant, sojourner, or stranger, who shall not repair to church, but shall forbear for a month together, not having reasonable excuse, shall forfeit 10l. for every month he shall continue in his house such person so forbearing. And the justices in sessions may determine the same. 3 *J. c. 4. f. 32, 33, 36.* Penalty for harbouring a recusant.

6. No recusant convict shall practice law or physick, nor shall be judge or minister of any court, or bear any military office by land or sea; and shall forfeit for every offence 100l. And shall also be disabled to be executor, administrator, or guardian. 3 *J. c. 5. f. 8. 22.* Recusant disabled as to offices.

7. A recusant conforming himself shall be discharged of all penalties, which he might otherwise sustain by reason of his recusancy. 1 *J. c. 4. f. 2.* Recusant conforming.

8. All commanders, captains, and officers at sea, shall cause the publick worship of almighty God, according to the liturgy of the church of *England*, to be performed in their respective ships: And prayers and preachings by Publick worship in the navy.

by the chaplains shall be performed diligently. 22 G. 2. c. 33. art. 1.

Qualification of
lecturers.

9. No person shall be received as a lecturer, or allowed to preach or read any lecture or sermon, without licence from the bishop, and assenting to the 39 articles, and reading the common prayer before his first sermon, and on the first lecture day of every month: on pain of three months imprisonment, for every offence, by two justices of the peace on certificate from the bishop of the offence committed. 13 & 14 G. 2. c. 4. f. 19, 20, 21.

Disturbers of
publick worship.

10. By the 1 Mar. sess. 2. c. 3. If any person shall disturb a preacher in his sermon by word or deed, he shall be apprehended and carried before a justice of the peace, who shall commit him to safe custody, and within six days, he and another justice shall examine the fact, and if they find him guilty by two witnesses, or confession, they shall commit him to gaol for three months, and further to the next sessions; and if at the sessions he repents and is reconciled, he shall be discharged on finding sureties for his good behaviour for a year; if not, he shall be continued in gaol till he does; saving the ecclesiastical jurisdiction; and he shall not be punished both ways.

And this statute, though made in queen Mary's reign, extendeth to the divine service now established. Gibf. 372.

And by the 1 W. c. 18. f. 18. If any person shall willingly and of purpose, come into any church, chapel, or other congregation permitted by the act of toleration, and disquiet or disturb the same, or misuse any preacher or teacher; he shall on proof thereof before one justice, by two witnesses, find two sureties to be bound by recognizance in 50l. and in default thereof shall be committed till the next sessions, and on conviction there of the said offence, he shall forfeit to the king 20l.

But it shall be lawful for all men, as well in churches, chapels, oratories, or other places, to use openly any psalms or prayer taken out of the bible, at any due time, not letting or omitting thereby the service. 2 & 3 Ed. 6. c. 1. f. 7.

And the court of king's bench refused to grant a certiorari, to remove an indictment at the sessions, for a person not behaving himself modestly and reverently at the

the church, during divine service; which altho' punishable by ecclesiastical censures, yet the court conceived it a proper cause within cognizance of the justices of the peace. *1 Keb. 491.* And this was before the above-mentioned statute of the *1 W. c. 18.*

11. No clergyman shall be arrested in any church or churchyard, whilst he attends to divine service; on pain of the imprisonment of the offender and ransom at the king's will, and gree to the party arrested. *50 Ed. 3. c. 5. 1 R. 2. c. 15.* Arresting a clergyman attending divine service.

But the arrest notwithstanding, if not on a *sunday*, is good in law. *Watson, c. 34.*

Purveyors.

1. **A**nciently the king's court was supplied with necessaries from the ancient demesnes of the crown; and in respect thereof, the tenants of those lands had many privileges, which they still enjoy: But this method being found to be troublesome and inconvenient, was by degrees disused; and afterwards the king was wont to appoint certain officers to buy-in provisions for his household, who were called purveyors, and claimed many privileges by the prerogative of the crown. *2 Inst. 542. 1 Haw. 114.* Abuses of purveyors.

2. The several laws which restrained the exorbitancies of these purveyors, make up a pretty large title in the old books; but these laws proving ineffectual to remedy the evil complained of, at length by the statute of the *12 C. 2. c. 24.* purveyance was entirely taken away: By which it is enacted, that no sum of money, or other thing, shall be taken for any provision, carriages or purveyance for the king. Purveyance taken away.

And that no person under colour of purveyance, shall take any timber, fuel, cattle, corn, grain, malt, hay, straw, victual, cart, carriage or other thing, without consent of the owner; nor shall require any to furnish any horses, oxen, or other cattle, carts, ploughs, wains, or other carriages, for the use of the king or his household, without the owner's consent:

Perbeyonds.

On pain of being committed to gaol, by a justice of the peace and the constable, until the next sessions, to be there indicted; and also of paying to the party treble damages, and treble costs on an action at law.

Quakers.

SO far as quakers are concerned in the act of toleration, amongst other protestant dissenters, see title **Dissenters**.

For quakers tithes, see title **Tithes**.

For quakers oaths, see title **Oaths**.

Quarentine. See **Plague**.



Here endeth the **THIRD VOLUME**.

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